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CANADIAN QUESTIONS.

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# NORTHERN BOUNDARY

OF THE

# UNITED STATES.

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THE DEMARCATION OF THE BOUNDARY BETWEEN THE UNITED STATES  
AND CANADA, FROM THE ATLANTIC TO THE PACIFIC, WITH  
PARTICULAR REFERENCE TO THE PORTIONS THEREOF  
WHICH REQUIRE MORE COMPLETE DEFINI-  
TION AND MARKING.

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REPORT PREPARED FOR THE DEPARTMENT OF STATE

BY  
CHANDLER P. ANDERSON,  
1906.

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PART I.

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THE NORTHEASTERN BOUNDARY.

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## THE NORTHEASTERN BOUNDARY.

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### THE BOUNDARY THROUGH PASSAMAQUODDY BAY.

The international boundary through Passamaquoddy Bay is defined by the following treaty provisions:

In Article II of the Provisional Treaty of 1782 and in Article II of the Treaty of Peace of 1783 the boundary line is carried down the middle of the St. Croix River to its mouth, and from that point to the Atlantic its course is left to be determined under the general provision which refers to the boundaries of the United States as—

“Comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.”

It will be observed that this provision gives no description of the course of the boundary line from the mouth of the St. Croix River to the sea. Apparently, the intention was that the line should be a water line passing among the islands so as to leave, if possible, all of the British islands on one side and the American islands on the other. The location of the line, therefore, depended upon the nationality of the several islands in the bay, many of which were claimed by both Governments. The situation was further complicated by the fact that the identity of the River St. Croix was in dispute.

This feature of the question was settled by the Commissioners appointed under the provisions of Article V of the Treaty of 1794 to “decide what river is the River St. Croix intended by the treaty.” The Commissioners determined upon the river now known as the St. Croix, which constitutes a portion of the present boundary.

The efforts made by the two Governments to settle the ownership of the disputed islands in the bay resulted in the negotiation in 1803 and again in 1807 of treaties fixing the line, but in each case the treaty failed of ratification.

The treaty negotiated in 1803 by Rufus King, on the part of the United States, and the Right Honorable Robert Banks Jenkinson

(commonly called Lord Hawkesbury), on the part of Great Britain, was amended by the Senate by striking out Article V, relating to the boundary west of the Lake of the Woods, and ratifications were not exchanged in consequence.

This treaty provided for the boundary in Passamaquoddy Bay as follows:

“ARTICLE I. The line hereinafter described shall and hereby is declared to be the Boundary between the Mouth of the River St. Croix and the Bay of Fundy, that is to say, a line beginning in the middle of the Channel of the River St. Croix at its Mouth (as the same has been ascertained by the Commissioners appointed for that Purpose) thence through the middle of the Channel between Deer Island on the East and North, and Moose Island and Campo-Bello Island on the West and South, and round the Eastern Point of Campo-Bello Island to the Bay of Fundy. And the Islands and Waters northward and eastward of the said Boundary together with the Island of Campo-Bello situate to the southward thereof are hereby declared to be within the Jurisdiction, and part of His Majesty's Province of New Brunswick; and the Islands and Waters southward and westward of the said Boundary, except only the Island of Campo-Bello, are hereby declared to be within the Jurisdiction, and Part of Massachusetts, one of the said United States.”

A similar attempt was made by Messrs. Monroe and Pinkney in 1807, but their treaty failed by reason of other causes. (Moore's International Law Digest, Vol. V, p. 717, sec. 834, Webster-Ashburton Treaty.) This treaty, as proposed by Messrs. Monroe and Pinkney, was inclosed in their letter of April 25, 1807, and is entitled: “Additional and explanatory articles, signed the — day of —, 1807, to be added to the treaty of amity, commerce, and navigation between His Britannic Majesty and the United States of America, signed at London, the 31st day of December, 1806.” The provision relating to the line through Passamaquoddy Bay is as follows:

“ARTICLE I. The line hereinafter described shall, and is hereby declared to be, the boundary between the mouth of the river St. Croix and the Bay of Fundy; that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the commissioners appointed for that purpose; thence through the middle of the channel, between Deer Island, Marvel island, and Campo Bello island on the east, and Moose island, Dudley island, and Frederick island on the west; and round the south point of Campo Bello island to the Bay of Fundy; and the islands and waters eastward of the said boundary are hereby declared to be within the jurisdiction and part of His Majesty's province of New Brunswick, and the islands and waters westward of the said boundary are declared to be within the jurisdiction and part of Massachusetts, one of the said United States; notwithstanding which, a full and entire right of navigation is reserved to the United States in the channel between Deer island on the east and

north, and Moose island and Campo Bello island on the west and south, and round the east point of Campo Bello island into the Bay of Fundy; the aforesaid channel frequently affording the only convenient and practicable navigation." (See American State Papers, vol. 3; Foreign Relations, pp. 162-164.)

After the war of 1812, during which the British had seized most of the islands in the bay, it was stipulated in the Treaty of Peace signed at Ghent in 1814 that all possessions taken during the war should be restored, and it was specially provided that such of the islands in Passamaquoddy Bay as were claimed by both parties should be held by the party in occupation without prejudice to the rights of the other party, however, until the question of title should be settled. It was further agreed that the question of title should be determined in accordance with the rights of the parties as they were established at and prior to the making of the Treaty of Peace of 1783.

These provisions will be found in Article I and Article IV of the Treaty of Ghent. Under the latter article Commissioners were appointed—

“to decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the said Treaty of Peace of One thousand seven hundred and eighty-three”;

which decision, if rendered jointly by the Commissioners, was to be considered final and conclusive on both parties.

The British claim was urged before the Commissioners on the ground that the islands in dispute had been part of the Province of Nova Scotia in and before the year 1783, which, under the terms of the treaty, would give them to Great Britain. The claim of the United States was based on the ground that all the islands in Passamaquoddy Bay, and also the island of Grand Menan, were within 20 leagues of the coast of the United States, and included within its boundaries, under the provisions of Article II of the Treaty of 1783, and it was denied that they ever were within the limits of the Province of Nova Scotia.

It is unnecessary in this connection to go into the arguments or evidence presented before the Commission, further than to say that neither side based its claim of title exclusively on occupation, jurisdiction, or possession, but both sides dealt with these points as tending to interpret the charters and grants offered in evidence, and to sustain the claim of title arising therefrom.

The Commissioners agreed upon a compromise settlement, and it appears that their decision was substantially in accord with the

settlement proposed in the treaties negotiated in 1803 and 1807, by which it may fairly be assumed they were largely influenced.

The decision of the Commissioners, dated November 24, 1817, decided—

“That Moose Island, Dudley Island, and Frederick Island, in the Bay of Passamaquoddy, which is part of the Bay of Fundy, do and each of them does belong to the United States of America; and we have also decided and do decide that all the other islands, and each and every of them in the said Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Menan in the said Bay of Fundy, do belong to his said Britannic Majesty in conformity with the true intent of the said second article of the said Treaty of 1783.”

Unfortunately, the Commissioners were not required to lay down on charts the line through the bay, and their decision left the exact location of the line still in a somewhat unsettled condition. Taking the language of the decision literally the United States was not entitled to any of the islands in the bay except the three named in the decision. A glance at the chart will show that there are a number of small islands between these three named islands and the American shore, all of which would have gone to Great Britain under a literal interpretation of the decision.

A more intelligent interpretation was adopted, however, and by common consent the decision was regarded as applying only to the islands in the bay which prior to 1783 had been claimed as part of Nova Scotia by Great Britain. The effect of this decision thus interpreted was to finally settle the question of the title with respect to all the islands in the bay, with the exception of one small island known as “Pope’s Folly,” less than one-half an acre in size and lying between Frederick Island (American) and Campobello (British), and nearer by one-half to Campobello than to Frederick. This question is still unsettled and is the main and practically the only reason for the delay in fixing the boundary, for it so happens that this island lies immediately in the natural course of the boundary line through the bay, and it is at this point only that there has been any serious dispute as to the location of the line. The positions taken by each side on the several occasions when the question has been under discussion are briefly as follows:

According to the American view this island, under the interpretation given the decision in its application to the other small unnamed islands in the bay, should have been assigned to the United States, and the facts, so far as they are now ascertainable, seem to support this view. The United States has also contended throughout the dispute that a controlling reason for leaving the island on the American side is found in the fact that the main ship channel at this point

passes on the British side of the island, through which channel the boundary line naturally should run.

On the other hand, Great Britain has always insisted upon a strict interpretation of the Commissioners' decision in its application to this island, and as a further ground has urged that the argument based on the location of the main ship channel has no force, in view of the fact that another, though less convenient, channel is found on the American side of the island which the boundary could follow, and that under the circumstances the island must be regarded as an appendage of the nearest larger island, which is Campobello, notwithstanding the fact that the main ship channel passes between.

An attempt was made to settle this question under the Convention of July 22, 1892, by which two Commissioners were appointed jointly—

“to determine upon a method of more accurately marking the boundary line between the two countries in the waters of Passamaquoddy Bay in front of and adjacent to Eastport, in the State of Maine, and to place buoys or fix such other boundary marks as they may determine to be necessary.”

No joint report was made by these Commissioners. It appears from the separate report made by the Commissioner for the United States, however, that they came to a substantial agreement and surveyed and charted the line and were prepared to recommend the acceptance of the line as agreed upon, with the exception of two parts of it about which they were unable to agree. One of these parts was where the line passes this island known as “Pope's Folly,” the title to which, for the reasons above discussed, was left in some doubt under the decision rendered by the Commissioners under the fourth article of the Treaty of Ghent.

The other part was just below Lubec Narrows. At this point the United States had dredged a new channel to the west of, and consequently on its own side of, the old channel, which, on account of the diversion of the current through the dredged channel, had filled up and was no longer used as the channel. The British Commissioner claimed that the line should be carried through the new dredged channel. To this there was no particular objection, except for the fact that by so doing some fish weirs located between the two channels, and owned and operated for many years past by American fishermen, would be left on the Canadian side of the boundary.

The questions of jurisdiction and ownership prior to the year 1783 are fully stated and argued in a decision by Judge Ware, rendered in the United States District Court in the State of Maine in 1823 (Ware's Reports, Vol. I, p. 18) in the case of “An Open Boat

and Cargo and Three Puncheons of Rum—Ricker, Claimant.” In that case it was held that this island at that time was within the limits of the State of Maine. The other questions outlined above are fully discussed in the report of the Commissioner on the part of the United States under the Treaty of 1892. A copy of this report and of Judge Ware’s opinion will be found in the pamphlet prepared for the information of the United States Commissioners of the Joint High Commission.

An attempt was made by the Joint High Commission in 1898 to harmonize these differences without going into all the details necessary for a decision on a strictly legal basis, and it was proposed that a compromise line running as nearly straight as possible should be adopted. It appeared that this could be accomplished by carrying the line through the new dredged channel below Lubec Narrows, in accordance with Great Britain’s contention, and through the main channel to the east of Pope’s Folly, in accordance with the United States’ contention, and the Commissioners considered this proposition, but no agreement was arrived at. This settlement would have the elements of a compromise by mutual concession, because, although the United States would get the island, the fishing grounds and fish weirs now claimed by the United States to the east of the dredged channel would go to Great Britain. If the question is to be adjusted by compromise this would seem to be a fair basis of settlement.

If, however, the question is not to be adjusted by compromise its settlement will depend upon the determination of the ownership of this island, and whether the line should be carried through the natural channel or the dredged channel, under a strict application of the recognized rules of international law. It is possible that at this late date it will be difficult to obtain the exact facts with respect to the ownership of the island in dispute prior to 1783, upon which the decision of that question largely depends.

In either case, whether the question be settled by compromise or by determination of the strict rights of the parties, an agreement by convention will be necessary for its final adjustment, and in such agreement the location of the line, so far as agreed upon by the Commissioners under the Convention of 1892, might safely be adopted.

#### FROM THE MOUTH OF THE ST. CROIX RIVER TO THE ST. LAWRENCE RIVER.

This portion of the boundary as originally described in the provisional peace articles of 1782, and repeated in Article II of the Definitive Treaty of Peace of 1783, is divided into a northern and

an eastern boundary. The boundary on the north is described as follows:

“From the northwest angle of Nova Scotia, viz, that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataracts.”

The boundary on the east is described as follows:

“East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence.”

Unfortunately, no map showing the location of the boundary line as agreed upon was annexed to these treaties, and the line was not even marked on any maps mutually accepted by the negotiators. This was doubtless due to the fact that most of the region through which the line was to run had never been surveyed, so that very little was known about it and the existing maps were understood to be inaccurate. The exact location of the boundary, therefore, was left to be determined by applying the general description of the boundary as defined in the treaty to the topographical conditions as afterwards ascertained.

When this came to be done it was found that the conditions assumed by the treaty description as existing were in many respects inaccurately stated, and disputes arose as to the location of this portion of the line throughout almost its entire length. As stated by President Jefferson in his annual message of October 17, 1803:

“A further knowledge of the ground in the northeastern and northwestern angles of the United States has evinced that the boundaries established by the Treaty of Paris between the British territories and ours in those parts were too imperfectly described to be susceptible of execution.” (Richardson's Messages and Papers of the Presidents, Vol. I, p. 359.)

The first dispute to be taken up for settlement was the identity of the River St. Croix named in the treaty, and Commissioners were appointed under Article V of the Treaty of 1794 “to decide what river is the River St. Croix intended by the treaty.” It is not necessary at this time and in the present connection to review the proceedings before these Commissioners and the arguments upon

which their decision was based. A full history of the proceedings and the controversy will be found in Moore on International Arbitrations, volume 1, pages 1-143.

The Commissioners agreed upon the river now known as the St. Croix, and on October 25, 1798, rendered their decision so declaring and describing with particularity the course of this river to its source. Maps in duplicate surveyed under the direction of the Commissioners, showing the river thus identified as the St. Croix, were signed by the Commissioners and filed with their decision.

It will be noted that Article V of the Treaty of 1794, above referred to, required the Commissioners to particularize the latitude and longitude of the mouth and of the source of the river. Owing to the delays in the field work, however, difficulties arose in executing this requirement, and in 1798 "an explanatory article to the Treaty of November 19, 1794," was concluded, releasing the Commissioners from particularizing the latitude and longitude of the source of the river, and agreeing instead that they might describe the river "in such other manner as they may judge expedient," and "that no uncertainty may hereafter exist on this subject" it was further agreed that the two Governments should concert measures "to erect and keep in repair a suitable monument at the place ascertained and described to be the source of the said River St. Croix." The location of the source of the River St. Croix on the map filed by the Commissioners fulfilled these requirements and a monument was thereafter erected on the spot indicated as the source. In thus determining the identity of the St. Croix and locating its source the location of that portion of the eastern boundary "to be drawn along the middle of the St. Croix" from its mouth to its source was settled, and at the same time the starting point was established for the rest of the eastern boundary, which, by the terms of the treaty, was to be drawn from the source of that river directly north to the "highlands" at the northwest angle of Nova Scotia.

It still remained, however, to determine what constituted the "highlands" and "the northwest angle of Nova Scotia" referred to in the treaty description, which were matters in dispute.

By reference to the treaty it will be found that the northwest angle is defined as "that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands" and the "highlands" were referred to as "the said Highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean."

It is evident from the description that the negotiators of the treaty, in defining this portion of the boundary, assumed that there was a well-defined ridge or height of land throughout this region



forming a watershed between the St. Lawrence and the Atlantic. When an attempt was made to actually locate the line, however, it was found that no such well-defined highlands existed at a point due north of the source of the St. Croix, and consequently that the location of the northwest angle of Nova Scotia, which was to be formed by a line drawn due north from the source of the St. Croix to such "highlands," could not be accurately determined under the treaty description.

This defect in the description also prevented the location of that portion of the northern line starting at this unlocated angle, from which the line was to run "along the said Highlands \* \* \* to the northwesternmost head of Connecticut River."

Difficulties were also presented in locating the farther end of this section of the line on account of the uncertainty as to which of several branches should be taken as the "northwesternmost head of Connecticut River."

Through the greater part of the region between these two points a height of land can be traced, dividing the waters flowing into the St. Lawrence from those flowing into the Atlantic, but without a starting point accurately fixed at either end of the line it was difficult to determine the exact location of even that portion of the boundary. The boundary described in the Treaty of 1783 was intended to conform as near as might be to the previously established boundaries along the southern borders of the Provinces of Quebec and Nova Scotia. The southern boundary of Quebec as then established ran along the highlands from the Bay of Chaleurs to the source of the Connecticut River, but this height of land was not mutually regarded as accurately fulfilling the requirements of the treaty description, and ultimately the boundary through this entire region became involved in the dispute.

The location of the line along the Connecticut River from its "northwesternmost head" to the 45th degree of north latitude was also dependent upon the determination of which of the several heads should be taken as the starting point, and that, as above stated, was one of the questions in dispute. On the part of the United States it was claimed that the most westerly branch, known as "Hall's Stream," was the one intended. It, appeared, however, that this branch did not join the main river until it had passed below the 45th parallel, and therefore if this branch was selected a line along the 45th parallel would not strike the Connecticut River at all. For that reason, among others, it was urged on the part of Great Britain that Hall's Stream should be rejected and a more easterly branch selected, joining with the main part of the Connecticut River considerably farther up.

From the Connecticut River at the 45th degree of north latitude to the St. Lawrence the description of the boundary was:

“From thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy.”

This section of the line was certainly described with sufficient accuracy to avoid any dispute as to its exact location, but here again difficulties arose, for it was found that the treaty line did not follow the old established boundary as actually laid down in 1774 between the Provinces of New York and Quebec, which boundary the negotiators of the treaty had intended to adopt, and ultimately, by common consent, the treaty description was abandoned and it was agreed that the line should conform to the location of this old line.

The 45th parallel had been fixed along this portion of the line as the boundary between the Provinces of New York and Quebec by a grant from James I in 1606, and again by royal proclamation in 1763, and finally it was confirmed as the boundary on August 12, 1768, by an order in council.

Between the years 1771 and 1774 this portion of the line was surveyed and monumented and thereafter was known as the “Valentine and Collins line,” from the names of the surveyors surveying it. Their survey was intended to lay the line along the 45th parallel, and it was supposed that this had been accomplished, and the line as laid out was accepted and vested interests on each side had been acquired in reliance upon it, and at the time of the Treaty of Peace it was established in full force.

No question seems to have arisen with respect to the accuracy of its location until 1818, when in the autumn of that year the British and American surveyors, acting under the Commission appointed by the Treaty of Ghent for the settlement of this boundary, discovered that at the Connecticut River, and also at Lake Champlain, the true parallel lay about three-fourths of a mile south of the old line. At Rouses Point in Lake Champlain, which was only about one-fourth of a mile south of the old line and therefore north of the true parallel, the United States had at that time constructed a fort at a cost of about a million dollars, which would be thrown into Canadian territory if the old line was abandoned as the boundary and the 45th parallel established instead.

At other points also the old line varied considerably both to the north and south of the 45th parallel, although it was found to coincide with it at the St. Lawrence River. The difficulties occasioned by the location of this line were finally settled by the Webster-Ashburton Treaty of 1842, which adopted the old Valentine and Collins line, as appears below.

Such, in brief, were the chief points of dispute along this portion of the boundary from the St. Croix to the St. Lawrence, which developed into the controversy known as the "Northeastern Boundary Question."

#### NEGOTIATIONS CONCERNING THE NOTHEASTERN BOUNDARY QUESTION AND ITS FINAL SETTLEMENT.

A treaty was concluded in 1803 providing for the settlement of this question, but nothing came of it, because before it could be acted upon by the Senate the cession of Louisiana was confirmed, making it necessary to change the description of the northwestern boundary, which was dealt with in one of the articles of this treaty. The Senate advised that the treaty be ratified, omitting the article affected by the Louisiana cession, but Great Britain refused to assent to the treaty so amended.

A further attempt was made in 1807 to arrange for the settlement of this question by treaty, which failed for reasons arising from outside questions. (For details of these negotiations see Moore on International Arbitrations, vol. 1, pp. 68, 69, and authorities there cited.)

From that time on the situation with respect to the boundary question remained unchanged until after the war of 1812, when provision was made in the Treaty of Peace signed at Ghent in 1814 for the appointment of Commissioners to locate the "highlands" and the line "along said Highlands referred to," and the "northwesternmost point of the Connecticut River," and to survey and lay out the line as described in the treaty. The exact questions to be determined by these Commissioners are set out in Article V of the Treaty of Ghent, under which they were appointed, which recites that—

"Neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two Powers as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut River, *has yet been ascertained;*"

And—

"That part of the boundary line \* \* \* which extends from the source of the river St. Croix directly north to the abovementioned northwest angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean to the northwesternmost head of Connecticut River, thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy, *has not yet been surveyed.*"

It will be observed that a distinction is here made between the points of the line the locations of which had not been ascertained and the portions which had not been surveyed, and in the latter class the line between the Connecticut River and the St. Lawrence was included. The fact that the old Valentine and Collins line did not coincide with the 45th parallel was discovered for the first time by the Commissioners appointed under this article, and subsequently when the adjustment of that question came up for settlement this recital in this article, that that particular portion of the line had not been surveyed, was a matter of some embarrassment to the United States.

The Commissioners appointed under this article met in September, 1816, and surveys were made under their direction. The differences between them, however, were found to be insurmountable and they finally came to a total disagreement on all points and made separate reports to that effect to their Governments on October 4, 1821.

The reports of these Commissioners and a detailed review of their proceedings and the positions taken by each Government on the several questions involved will be found in volume 1 of Moore on International Arbitrations, chapter 3, pages 65-83.

After the failure of the Commissioners under Article V of the Treaty of 1814 to agree, it was decided to resort to arbitration, and accordingly, under the Treaty of 1827, the settlement of this question was submitted to the decision of the King of the Netherlands. His award, given on January 10, 1831, avoided a direct decision of the questions submitted by proposing instead a compromise line, which was not satisfactory to either party and was rejected by both.

A review of the proceedings and the arguments advanced on each side in this arbitration will be found in volume 1 of Moore on International Arbitrations, chapter 4, pages 85-146.

In rejecting this award the Senate in 1832 recommended that the President open a new negotiation with Great Britain for the ascertainment of the line. Further negotiations were therefore undertaken and additional surveys were made, but no agreement was arrived at until the Treaty of 1842, by Article I of which this portion of the line was agreed to and defined as follows:

“Beginning at the monument at the source of the river St. Croix as designated and agreed to by the Commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the

channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohe-nagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river Saint Lawrence from those which fall into the river Saint John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of  $46^{\circ} 25'$  north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river Saint Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence River."

In this description of the boundary as agreed upon in this treaty it will be observed that in the absence of "highlands" north of the source of the St. Croix River the line there runs north only to the center of the St. John River. From this point it follows along that river and around through certain of its tributary branches until it reaches the source of its southwest branch. From that point the description in the original treaty is followed to some extent and the line runs along the "highlands" "which divide the waters which empty themselves into the St. Lawrence River from those which fall into the Atlantic Ocean" to the head of Hall's Stream, which is the branch of the Connecticut urged from the outset on the part of the United States as the northwesternmost head of that river intended by the treaty. From there it runs down the middle of the stream until it intersects the Valentine and Collins line, which is referred to as "known and understood to be the line of actual division between the States of New York and Vermont on one side and the British province of Canada on the other," and from that point it follows that line to the St. Lawrence River.

A review of the negotiations up to this point will be found in

Webster's speech in the Senate, April 6 and 7, 1846, and the documents referred to, which are printed in the Appendix to the Congressional Globe, first session, Twenty-ninth Congress, pages 524-537. See also Moore on International Arbitrations, volume 1, pages 147-161.

This treaty was submitted to the Senate by President Tyler on August 11, 1842. In his message of that date accompanying the treaty the settlement of the boundary questions under the treaty provisions is referred to as follows:

"Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the highlands to the northwesternmost head of Connecticut River. Which of the sources of that stream is entitled to this character has been matter of controversy and of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the highlands to the head of Hall's Stream and thence down that river, embracing the whole claim of New Hampshire and establishing her title to 100,000 acres of territory more than she would have had by the decision of the King of the Netherlands.

"By the treaty of 1783 the line is to proceed down the Connecticut River to the 45th degree of north latitude, and thence west by that parallel till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore received as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave on the British side a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouses Point, the site of a military work of the United States, it has been regarded as an object of importance not only to establish the rights and jurisdiction of those States up to the line to which they have been considered to extend, but also to comprehend Rouses Point within the territory of the United States. The relinquishment by the British Government of all the territory south of the line heretofore considered to be the true line has been obtained, and the consideration for this relinquishment is to inure by the provisions of the treaty to the States of Maine and Massachusetts.

"The line of boundary, then, from the source of the St. Croix to the St. Lawrence, so far as Maine and Massachusetts are concerned, is fixed by their own consent and for considerations satisfactory to them, the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. Johns and its tributaries down that river to the ocean free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

"So far as New Hampshire is concerned, the treaty secures all that she requires, and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two States by correcting the parallel of latitude may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9." (Richardson's Messages and Papers of the Presidents, Vol. IV, pp. 164, 165.)

On August 29, 1842, the Senate, by a vote of 39 to 9, gave its consent to the exchange of ratifications.

Under this settlement of the boundary Canada and New Brunswick received a portion of the territory claimed by Maine, and in return certain commercial concessions along the St. John River and in New Brunswick were granted to the lumbering and agricultural interests in Maine, and the strip of land lying between the Valentine and Collins line and the 45th parallel, from the Connecticut River to the St. Lawrence, which included the fort at Rouses Point, was surrendered to the United States.

Inasmuch as the acquisition of this strip did not inure to the benefit of Maine and Massachusetts, which had an interest in common with Maine in the territory claimed as part of that State, it was agreed that the Federal Government should pay to these two States the sum of \$300,000, to be divided between them equally, and also should reimburse them for expenses incurred in protecting the disputed territory and making a survey of it in 1838, and also that these States should receive their proportion of the "disputed territory fund" arising from charges for cutting lumber in the disputed territory, which had been held by New Brunswick pending the settlement of the dispute.

It was also provided that all grants of land made by either party within the disputed territory should be ratified, and in case of conflicting grants an equitable adjustment of claims should be made.

The provisions covering these points will be found in Articles III, IV, and V of the treaty.

By Article VI of the Treaty of 1842 it was provided that—

"For the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence River which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two commissioners shall be appointed"—

One by each Government; and it was further provided that they—

"Shall proceed to mark the line above described from the source of the St. Croix to the river St. John; and shall trace on proper maps the dividing-line along said river and along the river St. Francis to the outlet of the Lake Pohenagamook; and from the outlet of the said lake they shall ascertain, fix, and mark, by proper and durable

monuments on the land, the line described in the first article of this treaty."

It was further provided that their joint report should be accompanied by maps certified by them to be true maps of the new boundary.

The Commissioners appointed under this article were J. B. B. Estcourt, on the part of Great Britain, and Albert Smith, on the part of the United States, who carried out the work as required, and on June 28, 1847, their final report was completed and signed. This report contains a detailed description of the boundary as surveyed and marked by them and was accompanied by maps "faithfully constructed from that survey." Their report concludes with the statement that—

"The most perfect harmony has existed between the two Commissioners from first to last and no differences have arisen between the undersigned in the execution of the duties intrusted to them."

A copy of this report is printed in Volume IV of Richardson's Messages and Papers of the Presidents, pages 171-177. (See also S. Ex. Doc. No. 71, 30th Cong., 1st sess.)

A map "showing the lines as respectively claimed by the United States and Great Britain under the Treaty of 1783, as awarded by the King of the Netherlands, and as settled in 1842 by the Treaty of Washington" was prepared in 1843 under the direction of the United States Government. A copy of this map will be found in Moore on International Arbitrations, volume 1, page 148.

Before this report was filed certain of the original maps and surveys prepared to be filed with the United States Government in connection with it were destroyed by fire, as appears from the following extracts from a letter dated April 20, 1848, from Commissioner Smith to Mr. Buchanan, Secretary of State:

"I have to perform the painful duty of informing you that the maps of that line and of the adjacent country, which had been elaborately constructed by the scientific corps on the part of the United States, and contained upon 100 sheets of drawing paper of the largest size, together with the tables of the survey, have been destroyed by the conflagration of the building in which they were contained.

\* \* \* \* \*

"All the maps, drawings, and tables had been completed and duly authenticated by the Joint Commissioners, and were ready to be deposited with their joint report under their hands and seals in the archives of this Government. Of this I had the honor to inform you in my letter of the 24th ultimo.

\* \* \* \* \*

"There are tracings of the maps upon 'tissue paper,' without the topography, in the State of Maine, but they are not signed by the Commissioners.



"The field books of the engineers were, fortunately, not in Major Graham's office, and are preserved.

"Duplicates of the maps, duly authenticated, have been placed in the British archives at London, which, although they have not the topography of the country so fully laid down upon them as it was upon our own, represent with equal exactness the survey of the boundary itself. Should it be deemed expedient by this Government to procure copies of them, access to those archives for that purpose would undoubtedly be permitted and the object accomplished at small expense, and when completed these copies could be authenticated by the Joint Commissioners in accordance with the provisions of the treaty." (Richardson's Messages and Papers of the Presidents, Vol. IV, p. 170.)

Apparently there are no charts of this section of the boundary now on file in the Department of State which have a treaty value or can be regarded as official reproductions of treaty charts. There is on file, however, a set of lithographic copies of a series which do not bear the signatures of the Commissioners, but are entitled, "Boundary under the Treaty of Washington, August 9, 1842," etc., and are signed by Maj. J. D. Graham, who was the topographical engineer of the Commission on the part of the United States.

An examination of the records of this Commission in the British Foreign Office, made in August, 1906, with the assistance of Mr. Brant, the Foreign Office librarian, disclosed on file there a series of maps, bound in five volumes, entitled, "Maps of the boundary under the Treaty of Washington, August 9, 1842," which maps are indorsed:

"Maps of the boundary between the United States and the British possessions of North America, as established by the Treaty of Washington, August 9, 1842, and surveyed and marked under the direction of the Joint Commission appointed under the sixth article of that treaty.

(Signed)

"ALBERT SMITH,

"*U. S. Commissioner.*

"J. B. BUCKNALL ESTCOURT, *Lt. Col.,*

"*H. B. M. Commissioner of Boundary.*"

In addition to this set of five volumes of maps there are on file in the British Foreign Office four bound volumes of field notes and surveys and tables of distances and deflections, etc., prepared separately by the respective Commissioners. There is also on file there one bound volume of maps, which bears the following indorsement:

"This volume was used by the Commissioners in apportioning the islands of the St. John. The boundary they traced upon it was also traced upon a similar volume prepared for the American Commissioner at the same time.

"J. B. B. E."

[J. B. BUCKNALL ESTCOURT.]

Neither a duplicate original set nor copies of the above-described maps and records are on file in the Department of State.

It is reported that copies of a tabular statement showing the deflection angles and distances between the monuments, with the data procured by Lieutenant Thom, U. S. A., from a resurvey made in 1851 are on file in the War Department at Washington.

The line laid down by these Commissioners was marked with hollow cast-iron pillars or monuments 6 feet long, the lower half in the ground being 6 inches square, with projecting flanges at the bottom, the upper half above the ground tapering to 4 inches, and the top closed in the form of a pyramid. These monuments are marked on the north side, "J. B. Estcourt;" on the south side, "Albert Smith;" on the east side, "Treaty of Washington;" and on the west side, "Boundary, August 9, 1842."

A section of the "Valentine and Collins" line between Bebee Plain and Main street of Derby Line Rock Island was resurveyed by a special Joint Commission in 1849 to settle a dispute as to the location of certain boundary monuments along that part of the line. The duplicate original of the joint report of these Commissioners is on file in the Department of State at Washington.

A detailed description of the Valentine and Collins line will be found in Birdseye's Revised Statutes of New York, first edition, pages 2744-2746, and third edition, Volume III, page 3320. See also New York State Laws of 1892, chapter 678, section 5.

#### THE RE-MARKING OF THE BOUNDARY BETWEEN NEW YORK AND CANADA, AND PROPOSALS FOR RE-MARKING THE ENTIRE LINE TO THE MOUTH OF THE ST. CROIX RIVER.

An examination of the monuments along the boundary between the State of New York and Canada was made in 1887 under a New York State law passed in that year, requiring the State engineer and surveyor to make such examination then and every three years thereafter. The examination under this law in 1890, at the expiration of the first triennial period, was participated in by an officer appointed by the Canadian Government. It was discovered then and in subsequent examinations that very serious deterioration of the monuments had occurred, showing a progressive falling off in their condition and the necessity for repairs and renewals. The same conditions were reported along the rest of the boundary, wherever examinations were made.

Notwithstanding these conditions, the question of re-marking this boundary was not raised by either Government prior to the meeting of the Joint High Commission in 1898, and the subject did not come up for consideration before that Commission.

In 1899, however, the New York State engineer and surveyor, in anticipation of his triennial inspection which was required to be made in that year, called the situation, so far as it related to the New York boundary line, to the attention of the surveyor-general of Canada and suggested that another joint examination be made. The Canadian Government expressed itself as unwilling to enter upon a mere examination of the monuments without arranging at the same time for their repair and renewal wherever necessary, and suggested that as this feature of the work would be out of the power of the State of New York or of Canada, either separately or jointly, without an international agreement, the question was one which should be arranged for through the regular diplomatic channels.

Following up this suggestion the Canadian Privy Council adopted a report approved May 26, 1900, proposing that the two Governments join in making an examination of and in re-marking where necessary "the whole of the southern boundary wherever it has been surveyed by the various commissions appointed for that purpose."

The suggestion as to re-marking the entire boundary was not taken up at that time by the United States, but the Secretary of State, on October 29, 1900, at the request of the New York State engineer and surveyor, wrote to the British ambassador calling attention to the condition of the New York State boundary monuments and inquiring whether the Government of Canada would be "willing to join in having these monuments replaced and put in proper and first-class condition," and adding: "As no new survey is involved, but simply the repairing of existing monuments, it would not seem to require any new convention, but merely provision on both sides for the joint performance of the work."

In response to this suggestion the Canadian Privy Council adopted a report, approved January 5, 1901, expressing their willingness to join with the United States "in the examination and restoration, where necessary, of the monuments along the line between the Province of Quebec and the State of New York," although it was noted that this was only a small part of the work proposed by the Canadian Government, and at the same time they renewed their suggestion "that the scope of the proposed joint operations be enlarged so as to cover the whole of the boundary line, which was marked under the Webster-Ashburton Treaty, from the St. Lawrence to the St. Croix River."

This action of the Canadian Privy Council was communicated to the Secretary of State by the British ambassador in his letter of January 12, 1901. Meanwhile, the question of re-marking the boundary all the way to the Pacific coast had also come up for consideration, and on January 29, 1901, the Secretary of State wrote to the

British ambassador proposing arrangements for the entire boundary. With respect to the part now under consideration, from the St. Lawrence to the St. Croix, he proposed that a separate convention be concluded arranging for re-marking it by joint operation. His preference there expressed for a convention between the two Governments for this purpose, instead of leaving the matter to joint action by the several States and the Canadian Government, was explained on the ground that, "in this form, the arrangement would, I think, be more uniform and satisfactory in its working than if the mere restoration of impaired monuments were left to the cooperative action of the various State governments and the Government of the Dominion of Canada."

In a report of the Canadian Privy Council, approved March 5, 1901, this proposal was taken up for consideration, and after noting that it was in accord with the desire expressed in their reports of May 26, 1900, and January 5, 1901, "differing therefrom only in the proposition that the action necessary be provided for by a formal convention," it was advised that the Government of Canada accede to this proposition to provide for these surveys by convention.

In June following it was suggested by the New York State engineer and surveyor that the re-marking of the New York boundary be undertaken without first waiting for action with respect to the Maine, New Hampshire, and Vermont lines, and he requested that he be put in direct communication with the proper officials of the Canadian Government for the purpose of undertaking at once, conjointly with them, the placing of new monuments along that boundary, as the monuments there were in such a fragile and broken condition that unless replaced very soon by more permanent ones the boundary line might be lost.

Acting upon this suggestion the Secretary of State wrote to the British embassy on July 15, 1901, explaining the circumstances and making the following proposal:

"While the Department still adheres to the view expressed in its note of January 29, 1901, in which it is gratified to see that the Government of the Dominion of Canada shares that a general survey of the whole land and water boundary between the two countries, with a view to replacing lost monuments and erecting new ones, as well as determining by buoys or ranges, or both, the water boundaries in the narrow lake channels, is most desirable, the question presented on the New York boundary is of so simple a nature that it is conceived that no difficulty will be found in carrying out, forthwith, the suggestion of the governor of the State. There is no question of settling any dispute arising from the total disappearance of old monuments or the insufficient marking of the line by the treaty commissioners. It is merely a matter of repairing existing line marks, as to the situation of which no question of doubt can arise.

"It is not thought that an international convention would be necessary to provide for painting iron monuments, cementing the defective masonry of stone monuments, restoring inscriptions obliterated by exposure to the elements, or, in short executing all such mere repairs as may be needful to enable the line marks to subserve the purpose for which they were set up. All this can be done by the joint action of the appropriate agents of the engineer's department of the State of New York and of the Department of the Interior of Canada, without prejudice to any future agreement between the two Governments for the more effective demarcation—if need be—of the existing treaty boundary in that quarter."

In response to this proposal the Canadian Privy Council adopted a report, approved August 16, 1901, to the effect that—

"The proposed cooperation with the State of New York of the Government of the United States is quite in accord with the views expressed by his excellency's advisers in the minutes of council of May 26, 1900, and January 5, 1901, although the scope of the proposed operations is restricted to the limits of the State of New York, and as set forth in these minutes an inquiry into the condition of the whole land boundary between the United States and Canada is to be desired."

It was accordingly determined that the United States be informed of the concurrence of Canada in the proposal of the Secretary of State—

"It being understood that the agreement to the proposed cooperation is without prejudice to any further agreement between the two Governments for the more effective demarcation of the existing treaty boundary in that quarter, and that while each Government shall pay the expenses of its commissioners and surveyors the actual cost of repairs shall be equally divided."

The assent to this arrangement on the part of Canada was stated in a letter of August 25, 1901, from the British embassy to the Department of State.

This concurrence of views having been reached, it was arranged that the restoration of defective monuments marking the boundary of New York and Canada be proceeded with under the joint direction of the State engineer of New York and the Canadian Department of the Interior, without awaiting the conclusion of a more formal agreement between the United States and Great Britain.

Pursuant to this arrangement the examination and re-marking of the boundary was undertaken by Edward A. Bond, State engineer and surveyor, as commissioner for the State of New York, and William F. King, chief astronomer of the Interior Department, commissioner for Canada. Their report was signed in duplicate on

January 10, 1903, and was accompanied by a detailed report of the field work made jointly by H. P. Willis, representing the New York commissioner, and C. A. Bigger, representing the Canadian commissioner. These reports will be found printed in full in the annual report of the New York State engineer and surveyor for the year 1902, pages 67-102.

The description of the monuments placed by them to mark this boundary is given in their report as follows:

"The monuments are 6 feet in length, the lower portion of the stone having an ashlar face, 12 inches square, for 1 foot of its length. From this point, for a distance of 4 feet 7½ inches, the stone tapers from 12 inches to 9 inches on each side, with each corner having a beveled face of ½ inch wide. The remaining 4½ inches at the top is dressed in the form of a pyramid.

"It was decided that they should be set in concrete bases 3 feet square and averaging 4 feet 6 inches in the ground and 9 inches above the surface. One foot of the granite stone was embedded in the concrete. The upper surface of the concrete was given a slope to turn rain and on it was imprinted the lettering, as follows:

"On the south side, 'U. S.'

"On the north side, 'Canada.'

"On the west side, 'Treaty, 1842.'

"On the east side the number of the monument, with 'Renewed, 1902.'

"In the case of the new monuments the word 'renewed' was omitted and the letter A followed the number."

It is to be noted that this arrangement, as appears from the correspondence and proceedings above referred to when read at length, was understood to be merely preliminary to the making of a more formal agreement between the United States and Great Britain, such as was then contemplated but postponed on account of the reported necessity for immediate action along the New York boundary, and in view of this understanding and of the terms of the arrangement and the proviso that it was made without prejudice to further action by the two Governments it may be found desirable that some further action with respect to this portion of the boundary should be taken between the United States and Great Britain in connection with the negotiations now under consideration. An official copy of the report of the commissioners above referred to, which had never been officially communicated to the Department of State, has recently been obtained from the State of New York and is now on file in the Bureau of Rolls and Library. In connection with this report a copy of the survey by the New York State engineer of this portion of the line, showing the location of the monuments, was also filed in the Department of State.

ARRANGEMENTS FOR MARKING AND MAPPING THE BOUNDARY  
BETWEEN THE STATES OF VERMONT, NEW HAMPSHIRE, AND  
MAINE, ON THE ONE SIDE, AND CANADA, ON THE OTHER.

It appears from the diplomatic correspondence above referred to that the importance of marking this portion of the boundary as soon as possible is recognized by the Governments on both sides of the line, and it also appears that they are in accord on the proposition that where the work to be done, as is the case with respect to this portion of the line, involves no disputed question as to the course or location of the line but requires only the restoration of original monuments and the erection of new ones in order to render more effective the boundary as already surveyed and marked, it is not necessary to enter into a formal convention for that purpose, and that an informal arrangement making provision on both sides for the joint performance of the work is all that is required.

An important step in the direction of the desired result was taken in 1905 by the United States and Canada in causing a preliminary examination of this portion of the boundary to be made by representatives of the two Governments acting jointly. A joint report of this examination has been prepared by the representatives so appointed, who were Mr. J. B. Baylor, Assistant Superintendent of the United States Coast and Geodetic Survey, representing the United States, and G. C. Rainboth, D. L. S., representing Canada. This report is dated February 22, 1906, and contains a general review of the past and present conditions of the northeastern boundary of the United States and Canada from the Richelieu River to the source of the St. Croix River, with recommendations as to what should further be done. It also shows in detail the present condition of each of the monuments inspected by them.

This examination has shown the necessity for, and the report strongly urges, a survey and remonumenting of this entire boundary.

A suggestion has already been made, through the British ambassador, to the Canadian Government that joint operations be undertaken for carrying out the work proposed. (See Mr. Root's notes to the British ambassador of January 5 and April 26, 1906.)

It is stated in the report that there seems to be no *immediate* necessity for a resurvey of the boundary line as defined by the water courses through this portion of the boundary, namely, Hall's Stream, the southwest branch of the St. John River, the St. Francis River, and the St. John River, and that it will be sufficient for the present to put in fresh monuments on the islands, "without fixing accurately the positions of the new monuments by actual surveys." These waterways will have to be re-marked ultimately, however, and it

would seem to be desirable that whatever is necessary to make the marking of the boundary complete and permanent should be done as soon as possible.

The report also calls attention to the loss by fire of the charts and tabular statements of distances and angles prepared by Commissioners Estcourt and Smith under Article VI of the Treaty of 1842, and suggests that photographic copies of the duplicate originals of these be obtained from the British Government.

This report also recommends that joint action be taken by the Governments on either side of the line for the removal of all buildings used for commercial purposes which stand on or in immediate proximity to the boundary line, and that the construction of any new buildings on the line or the use for commercial purposes of any old buildings so placed be prohibited. In explanation of this recommendation it is stated that the use of such buildings, particularly when used for saloons, stores, or factories, gives rise to customs frauds and other unlawful practices.

Under the United States Revised Statutes, section 3107, it is provided that if any store, warehouse, or other building upon or near the boundary line between the United States and any foreign country is found to contain dutiable merchandise, the same, together with such building, shall be seized, forfeited, and disposed of according to law, and the building shall be forthwith taken down or removed. It is understood that a similar law has been enacted in Canada.

It appears from the report that under existing conditions these laws are practically inoperative, owing to the difficulty of determining jurisdictional questions. The boundary line as now marked is so imperfectly defined that it is impossible to locate it exactly with respect to many of the buildings so placed. In this connection it is further suggested by the report that a strip 30 feet wide—15 feet on each side of the boundary—shall be reserved by the two Governments exclusively for Government uses.

It seems likely that the more complete marking of the line as now proposed will obviate to some extent the difficulty which this suggestion is designed to meet. The Canadian Government has not yet committed itself on the question of this strip, and the suggestion requires further examination and consideration.

By an act of Congress approved June 16, 1906, the sum of \$20,000 was appropriated "for the more effective demarcation and mapping of the boundary line between the United States and Canada near the 45th parallel from the Richelieu River to Hall's Stream, as established by the Commissioners of 1842-1848 under the Treaty of Washington of August 9, 1842." (Diplomatic and consular service appropriations for the fiscal year ending June 30, 1907.)



A similar appropriation was made on the part of Canada, and by an exchange of notes between the Department of State and the British embassy it was agreed and arranged that a commission be appointed to carry out the work and that each Government should bear the expense of its own commissioner and of his surveyor and assistants, and that the two Governments should bear equally the cost of the monuments, their transportation, and erection. (Notes of May 31, 1906, Mr. Townley to the Secretary of State, and of June 12 and July 11, 1906, Mr. Bacon to the British ambassador.)

On July 10, 1906, Mr. O. H. Tittmann, Superintendent of the Coast and Geodetic Survey, was designated as Commissioner to represent the United States with respect to the re-marking and mapping of the entire line from the Richelieu River eastward to the waters of the St. Croix River, but in view of the limitation of the work to be carried on under the appropriation referred to, the supervision of the demarcation of the line between the Richelieu River and Hall's Stream was the immediate duty assigned to him, and he was authorized "to arrange the details and to carry out the work and to sign the final report and maps as Commissioner for the United States jointly with the British Commissioner."

Mr. W. F. King having been designated as Commissioner on the part of Great Britain, the work authorized was thereupon jointly undertaken by him and Mr. Tittmann, and it is understood to be now nearing completion.



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## PART II.

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THE BOUNDARY FROM THE INTERSECTION OF THE  
FORTY-FIFTH PARALLEL AND THE ST. LAWRENCE  
RIVER TO THE LAKE OF THE WOODS.

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## THE BOUNDARY FROM THE INTERSECTION OF THE FORTY-FIFTH PARALLEL AND THE ST. LAWRENCE RIVER TO THE LAKE OF THE WOODS.

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This portion of the boundary is described in Article II of the provisional treaty of peace with Great Britain of 1782 and in Article II of the definitive treaty of peace of 1783 as follows:

“ \* \* \* thence (from the point where the 45th degree of north latitude strikes the River Iroquois or Cattaraquy) along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication in Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake to the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof and from thence on a due west course to the river Mississippi.”

The boundary as above defined was not surveyed or charted by joint action of the two Governments until the appointment of Commissioners for that purpose under Articles VI and VII of the Treaty of 1814.

### THE PORTION OF THIS LINE INCLUDED IN ARTICLE VI OF THE TREATY OF 1814.

By Article VI of that treaty it was provided that two Commissioners should be appointed, one by each Government, to designate the boundary through the Great Lakes “to the water communication between Lake Huron and Lake Superior,” and by Article VII it was provided that the same Commissioners, after they had executed the duties assigned to them under Article VI, should determine the boundary “from the water communication between Lake Huron and Lake Superior to the most northwestern point of the Lake of the Woods.”

Messrs. Peter B. Porter and Anthony Barclay were appointed Commissioners, respectively, on the part of the United States and Great Britain under these articles. Article VI in full, with the exception of a provision covering the possibility of a disagreement which did not occur, is as follows:

“Whereas by the former treaty of peace that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the river Iroquois or Cataraquy to the Lake Superior, was declared to be ‘along the middle of said river into Lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie, thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication into the Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior;’ and whereas doubts have arisen what was the middle of the said river, lakes and water communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States: In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. The said Commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall, by a report or declaration, under their hands and seals, designate the boundary through the said river, lakes and water communications, and decide to which of the two contracting parties the several islands lying within the said rivers, lakes and water communications, do respectively belong, in conformity with the true intent of the said treaty of one thousand seven hundred and eighty-three. And both parties agree to consider such designation and decision as final and conclusive.”

The Commissioners arrived at an agreement with respect to the entire portion of the line included in Article VI and the ownership of the several islands lying along the boundary waters, and their joint report was completed and signed on the 18th day of June, 1822. A copy of their report in full is printed in *Treaties in Force*, 1904, page 305.

This decision describes in detail the course of the line from the starting point at St. Regis on the St. Lawrence River to the head of St. Joseph's Island at the foot of the Neebish Rapids in the water communication between Lake Huron and Lake Superior, which point is indicated by the Commissioners as the “termination of the boundary directed to be run by the sixth article of the Treaty of Ghent.”

In determining the location of the line with respect to the islands

lying in its course, the Commissioners adopted the invariable rule that the boundary should be a water line throughout, thus avoiding the division of any island, and their decision declares that—

“all the islands lying in the rivers, lakes and water communications, between the before-described boundary-line and the adjacent shores of Upper Canada, do, and each of them does, belong to His Britannic Majesty, and that all the islands lying in the rivers, lakes and water communications, between the said boundary-line and the adjacent shores of the United States, or their territories, do, and each of them does, belong to the United States of America, in conformity with the true intent of the second article of the said treaty of 1783, and of the sixth article of the treaty of Ghent.”

In addition to describing the line the decision also declares that the line—

“is more clearly indicated on a series of maps accompanying this report, exhibiting correct surveys and delineations of all the rivers, lakes, water communications and islands, embraced by the sixth article of the treaty of Ghent, by a black line shaded on the British side with red, and on the American side with blue; and each sheet of which series of maps is identified by a certificate, subscribed by the Commissioners, and by the two principal surveyors employed by them.”

The duplicate original set of this series of maps belonging to the United States is on file in the Department of State at Washington. It is reported that the other duplicate original set is in the possession of the British Government, and a copy made by the Ordinance Office in London is on file at Ottawa. A reproduction of these maps will be found in volume 6 of Moore's International Arbitrations. The series in the Department of State, and as reproduced, consists of twenty-five maps, each of which, with the exception of maps numbered 11 and 17, is signed by the two Commissioners and the two principal surveyors. All the maps of this series, with the exception of Nos. 11, 17, and 22, bear the following certification:

“We certify this to be a true map of part of the boundary designated by the sixth Article of the Treaty of Ghent, from actual survey by order of the Board.”

No certification appears on Map No. 22, which shows the boundary through Lake St. Clair, but it apparently was signed by the Commissioners and the surveyors.

Map No. 11 shows the boundary line through Lake Ontario, and is indorsed:

“Copied from the survey made in the years 1815-16-17 by Captain H. F. W. Owen of H. B. Majesty's Royal Navy.”

The next two succeeding maps in the series, which are signed and certified by the Commissioners, show the line at each end of Lake Ontario.

Map No. 17 shows the line through Lake Erie from the Niagara River to the Detroit River, and is indorsed:

“Lake Erie. That part west of Points Pélé and Sandusky, including all the islands, is reduced from the actual surveys made by order of the Commissioners. The other parts of the lake (except the entrance into the Niagara River) are reduced from such printed maps as are supposed to be most accurate.”

The maps next preceding and following No. 17 in the series show the line as it enters Lake Erie at either end, and both of these maps are signed and certified by the Commissioners.

It appears, therefore, that the line through the central portion of Lakes Ontario and Erie is not marked on charts authenticated by the signatures of the Commissioners, and in view of the statement in their report that “each sheet of the series is identified by a certificate subscribed by the Commissioners,” etc., it would seem that these maps should not be regarded as properly a part of the series.

In a report made to the Secretary of State by Mr. Adee, the Second Assistant Secretary, dated February 21, 1896, on the northern boundary question, the following statement is made with respect to the boundary in Lakes Erie and Ontario:

“The original chart of Lake Erie, like that of Ontario, is unsigned by the Commissioners. It may therefore be properly said that as to the main body of those two lakes there does not exist a charting of the boundary having the force and value of a treaty.”

From the foregoing review of the work of the Commissioners under the sixth article of the Treaty of 1814 it appears that the entire portion of the boundary included in that article, extending from the point of intersection of the 45th parallel with the St. Lawrence River to the water communication between Lake Huron and Lake Superior, is defined and described in detail under treaty authority in the report of the Commissioners, and, with the exception of the portion through the main body of Lakes Ontario and Erie, and possibly also Lake St. Clair, is surveyed and marked upon charts having the international force and effect of a treaty. The question of the accuracy of these charts and the actual physical demarcation of the boundary as located by them remains to be considered and is dealt with elsewhere in this report.

The field notes of the surveys of this Commission do not appear to have been filed in the Department of State. The only official records of the work of this Commission to be found there are a



manuscript journal of the proceedings of the Commission and the final award of the Commissioners, with the boundary maps forming part of it.

A complete review of the proceedings of the Commissioners under the sixth article of the Treaty of Ghent will be found in Moore's *International Arbitrations*, volume 1, pages 162-170.

THE LINE FROM THE FOOT OF NEEBISH RAPIDS TO THE MOST NORTHWESTERN POINT OF THE LAKE OF THE WOODS, INCLUDED IN ARTICLE VII OF THE TREATY OF 1814.

Messrs. Porter and Barclay having executed the duties assigned to them as Commissioners under the sixth article of the Treaty of Ghent, and having concluded their proceedings under that article by their report of June 18, 1822, thereupon proceeded under Article VII of that treaty—

“To fix and determine according to the true intent of the said Treaty of Peace of one thousand seven hundred and eighty three, that part of the boundary between the dominions of the two Powers, which extends from the water communication between Lake Huron and Lake Superior to the most North Western point of the Lake of the Woods;—to decide to which of the two Parties the several Islands lying in the Lake, water communications, and Rivers forming the said boundary do respectively belong in conformity with the true intent of the said Treaty of Peace of one thousand seven hundred and eighty three and to cause such parts of the said boundary as require it to be surveyed and marked.”

It was also provided that the—

“Commissioners shall by a report or declaration under their hands and seals designate the boundary aforesaid, state their decision on the points thus referred to them, and particularize the Latitude and Longitude of the most North Western point of the Lake of the Woods, and of such other parts of the said boundary as they may deem proper. And both parties agree to consider such designation and decision as final and conclusive.”

As above stated, the Commissioners under the sixth article had carried the line to a point in the St. Mary's River just below the foot of Neebish Rapids, and owing to the entire absence of any reference to the continuation of the line through the connecting waters between Lakes Huron and Superior in the description of the boundary in the treaties of 1782 and 1783, a serious question presented itself as to the jurisdiction of the Commissioners under Article VII to continue the line through the St. Mary's River. Under Article VI the Commissioners were empowered to designate the boundary only “to the water communication between that lake (Huron) and Lake Superior,”

and under Article VII they were authorized to determine the boundary "*from* the water communication between Lake Huron and Lake Superior," etc., and they were required to designate the boundary "in conformity with," in the one case, and "according to," in the other, the true intent of the Treaty of 1783, which, as above stated, contained no reference to the course of the line through this particular waterway. The omission was the more noticeable because the boundary was particularly described in that treaty as running along the middle of the waterways between Lakes Ontario and Erie, and between Lakes Erie and Huron. The Commissioners decided, however, that this omission was a mere inadvertence, and they interpreted the true intent of the treaty to be that the line was to continue through the middle of this water communication from Lake Huron to Lake Superior.

Starting, therefore, from the point where they terminated the line under the sixth article, they proceeded to carry the boundary line through the St. Mary's River, but at the very outset they encountered a divergence of views as to its location around St. George or Sugar Island, which lies almost immediately above the starting point. Each Commissioner insisted, for reasons which need not be reviewed here, that the line should leave this island on his own side of the boundary. Various compromises were offered on each side, but they were unacceptable, and, although some adjustment of the question would probably have been arrived at if this had been the only point in dispute, it was found that owing to irreconcilable differences as to another portion of the line a final disagreement was inevitable, and it was decided to leave this question open for future adjustment.

The Commissioners agreed, however, on the course of the boundary from above St. George or Sugar Island through the Sault Ste. Marie and across Lake Superior to a point north of Isle Royal in that lake. The portion of the boundary thus agreed upon was laid down by them on maps surveyed under their direction, and was marked by a black line shaded on the British side with red and on the American side with blue.

Their agreement as to this portion of the line was entered in their journal on October 23, 1826, as follows:

"That, in the opinion of the commissioners, the following described line, which is more clearly indicated by a series of maps prepared by the surveyors, and now on the files of this board, by a line of black ink, shaded on the British side with red, and on the American side with blue, is, so far as the same extends, the true boundary intended by the treaties of 1783 and 1814; that is to say, beginning at a point in the middle of St. Mary's river, about one mile above the head of St. George's or Sugar Island, and running

thence, westerly, through the middle of said river, passing between the groups of islands and rocks which lie on the north side, and those which lie on the south side of the Sault de Ste. Marie, as exhibited on the maps; thence, through the middle of said river, between points Iroquois and Gros Cap, which are situated on the opposite main shores, at the head of the river St. Mary's, and at the entrance into Lake Superior; thence, in a straight line, through Lake Superior, passing a little to the south of isle Cariboeuf, to a point in said lake, one hundred yards to the north and east of a small island named on the map Chapeau, and lying opposite and near to the northeastern point of isle Royale."

From the point above Isle Royal in Lake Superior to a point at the foot of Chaudière Falls in Lac la Pluie, or Rainy Lake, the Commissioners were unable to agree as to the location of the line. The treaty descriptions required that the line, after passing north of Isles Royal and Phelippeaux in Lake Superior, should go "to Long Lake; thence through the middle of said Long Lake to the water communication between it and the Lake of the Woods, to the said Lake of the Woods." It was found that there was no lake in that region known as Long Lake, but that there were four separate routes which the line might follow, any one of which, in the absence of the others, would have been regarded as sufficiently fulfilling the requirements of the treaty description. The northernmost of these was through the River Kamanistiquia, for which the American Commissioner contended. The southernmost one, which the British Commissioner selected, was through Fond du Lac or St. Louis River. The two intermediate ones were the Grand Portage route and the Pigeon River route, which latter was a few miles to the north of the other.

From the foot of Chaudière Falls to the most northwestern point of the Lake of the Woods the Commissioners agreed upon the location of the line, which they marked as before on the maps surveyed and prepared under their direction. A detailed description of the portions thus agreed upon is set out in the records of their proceedings as follows:

"Beginning at a point in Lac La Pluie, close north of island marked No. 1, lying below the Chaudière falls of lake Namecan; thence down this channel, between the islets marked No. 2 and No. 3; thence, down the middle of said channel, into Lac La Pluie, westward of island No. 4; thence, through the said lake, close to the south point of island No. 5; thence, through the middle of said lake, north of island No. 6, and south of island No. 7; thence through the middle of said lake, to the north of islet No. 8, and south of islands No. 9, No. 10, No. 11, and between islands No. 12 and No. 13; thence, south of islands No. 14 and No. 15; thence, through the middle of said lake, north of a group of islands, No. 16; thence, south of a group of rocks, No. 17; thence, south of a group of islets, No. 18; thence, north of an islet, No. 19; thence,

through the middle of said lake, to the south of island No. 20, and all its contiguous islets; thence, south of island No. 21, and midway between islands No. 22 and No. 23; thence, southwest of island No. 24; thence, north of island No. 25; thence, through the middle of said lake, to its *sortie*, which is the head of the Rivière La Pluie; thence, down the middle of said river, to the Chaudière falls, and having a portage on each side; thence, down the middle of said falls and river, passing close south of islet No. 26; thence, down the middle of said Rivière La Pluie, and passing north of islands, No. 27, No. 28, No. 29 and No. 30; thence, down the middle of said river, passing west of island No. 31; thence, east of island No. 32; thence, down the middle of said river, and of the Manitou rapid, and passing south of No. 33; thence, down the middle of said river, and the Long Sault rapid, north of island No. 34, and south of islets No. 35, No. 36, and No. 37; thence, down the middle of said river, passing south of island No. 38; thence, down the middle of said river, to its entrance between the main land and Great Sand Island, into the Lake of the Woods; thence, by a direct line to a point in said lake, one hundred yards east of the most eastern point of island No. 1; thence, northwestward, passing south of islands No. 2 and No. 3; thence, northwestward of island No. 4, and southwestward of islands No. 5 and No. 6; thence, northward of island No. 7, and southward of islands No. 8, No. 9, No. 10, and No. 11; thence, through the middle of the waters of this bay, to the northwest extremity of the same, being the most northwestern point of the Lake of the Woods. And from a monument erected in this bay, on the nearest firm ground to the above northwest extremity of said bay, the courses and distances are as follows, viz: 1st. N.,  $56^{\circ}$  W.,  $156.5\frac{1}{2}$  feet; 2d. N.,  $6^{\circ}$  W.,  $861\frac{1}{2}$  feet; 3d. N.,  $28^{\circ}$  W., 615.4 feet; 4th. N.,  $27^{\circ} 10'$  W., 495.4 feet; 5th. N.,  $5^{\circ} 10'$  E.,  $1,322\frac{1}{2}$  feet; 6th. N.,  $7^{\circ} 45'$  W., 493 feet; the variation being  $12^{\circ}$  east. The termination of this 6th or last course and distance, being the above said most northwestern point of the Lake of the Woods, as designated by the 7th article of the treaty of Ghent; and being in the latitude forty-nine degrees twenty-three minutes and fifty-five seconds north of the equator; and in longitude, ninety-five degrees fourteen minutes and thirty-eight seconds west from the observatory at Greenwich."

Having disagreed, as above described, on certain portions of the line, the Commissioners did not unite in a joint report, but each filed a separate report, and in such reports will be found detailed descriptions of the portions of the line proposed by them upon which they did not agree and the grounds upon which they based their respective positions. (H. R. Ex. Doc. No. 451, 25th Cong., 2d sess.)

The Commissioners had their final meeting on December 24, 1827, and, after exchanging their reports, adjourned *sine die*.

The charts prepared by direction of the Commissioners under Article VII of this treaty comprise two separate sets, one of which consists of twenty-six charts numbered I to XXVI, inclusive, each one of which is certified to be—

"A true map of part of the survey under the seventh article of the Treaty of Ghent, made by order of the Commissioners."

and is signed by the Commissioners, Barclay and Porter. On this set the boundary line is marked, so far as the Commissioners agreed upon it, by a black line shaded red on the British side and blue on the American side, and the charts showing the line so agreed upon were later adopted as boundary maps under the Webster-Ashburton Treaty of 1842. With this series there are two additional unnumbered charts, which are indorsed as copies of original surveys prepared and filed—

“to exhibit the course of a certain line described by the British Commissioner for a proposed boundary, as set forth in the journal of the Board under date of the 23rd day of October, 1826.”

These charts are attached as subcharts to Charts Nos. XIV and XV of this series and bear the signatures of the Commissioners, but the line referred to in the indorsement as proposed by the British Commissioner appears only on the latter one, which shows Lac la Croix on a larger scale than in the main Chart No. XV, to which it is annexed. The proposed line shown on this subchart was afterwards adopted by Webster and Ashburton.

The other series consists of a set of charts numbered 1 to 8, inclusive, each of which is certified to be—

“A true map of part of the survey under the seventh article of the Treaty of Ghent, made by order of the Commissioners.”

and is signed by Commissioners Porter and Barclay.

The first two charts of this set cover the section from Neebish Rapids to Lake Superior; and the rest cover the section from Isle Royal in Lake Superior to and through the water communications to the westward of Lake Superior, as far as Lake Namecan immediately below Chaudière Falls. The line agreed upon by Webster and Ashburton was afterwards marked by them on Chart No. 1 of this set, which was also signed by them and now forms part of the set of boundary maps having an authoritative value under the Webster-Ashburton Treaty.

Chart No. 2 of this set shows the line through the St. Mary's River, so far as agreed upon by the Commissioners, and consequently is one of the boundary maps adopted under the Webster-Ashburton Treaty.

On Charts Nos. 3 and 6 of this set a line is shown at points where the Commissioners disagreed, and as these particular charts were not afterwards adopted by Webster and Ashburton in the final adjustment of the boundary, the line as shown on them has no authoritative value. No line is shown on the remaining charts of this series.

From the foregoing review of the work of the Commissioners under the seventh article of the Treaty of 1814 it appears that the entire portion of the boundary included in that article, extending from the point in the St. Mary's River between Lakes Huron and Superior, where the line under the sixth article terminated, to the most northwestern point of the Lake of the Woods, was surveyed and charted under the direction of the Commissioners; that the portions of this line upon which they agreed—viz, (1) from a point above St. George or Sugar Island in the St. Mary's River to a point just north of Isle Royal in Lake Superior, and (2) from a point at the foot of Chaudière Falls in Rainy Lake to the most northwestern point of the Lake of the Woods—were marked by them upon the charts of the Commission, and were defined and described in detail in the records of the proceedings of the Commission; but the Commissioners having failed to agree with respect to certain portions of the line, and no joint report having been rendered by them, their decision as to the location of the portions agreed upon was not regarded as final and conclusive under the terms of Article VII of the treaty, which provided that in the event of the Commissioners differing their reports should be referred to some friendly sovereign or state to decide on such differences.

A complete report of the proceedings of the Commissioners under the seventh article of the Treaty of Ghent will be found in Moore's *International Arbitrations*, volume 1, pages 171-191.

#### THE SETTLEMENT OF THIS BOUNDARY BY THE WEBSTER-ASHBURTON TREATY OF 1842.

Notwithstanding the provision in Article VII of the Treaty of 1814 for arbitration in case of a disagreement by the Commissioners, no action was taken by either Government in that direction. The northeastern boundary question, which at that time was of much greater importance than the northwestern boundary question, had recently been referred to arbitration and the decision rendered on January 10, 1831, had proved unsatisfactory to both sides and was not accepted by either.

With respect to the boundary included in Article VII of the Treaty of 1814, apparently no discussion took place between the two Governments, after the adjournment of the Commissioners in 1827, until 1839, in which year, and in the following year, this boundary question formed the subject of diplomatic correspondence, which finally led to the negotiations between Webster and Ashburton, resulting in the settlement of this and other portions of the northern boundary by the Treaty of 1842.

In Article II of that treaty the portion of the boundary included in Article VII of the Treaty of Ghent is agreed upon as follows:

“It is moreover agreed, that from the place where the joint Commissioners terminated their labors under the sixth article of the treaty of Ghent, to wit: at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between Saint Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence, up the east Neebish channel, nearest to St. George's Island, through the middle of Lake George;—thence west of Jonas' Island, into St. Mary's River to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said Island to the United States; thence, adopting the line traced on the maps by the Commissioners, thro' the river St. Mary and Lake Superior, to a point north of Ile Royale in said Lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned Island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point, southwesterly, through the middle of the Sound between Ile Royale and the northwestern mainland, to the mouth of Pigeon river, and up the said river to, and through, the north and south Fowl Lakes, to the Lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water-communication to Lake Saisaginaga, and through that Lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods—thence, along the said line, to the said most northwestern point, being in latitude  $49^{\circ} 23' 55''$  north, and in longitude  $95^{\circ} 14' 38''$  west from the Observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water-communications and all the usual portages along the line from Lake Superior to the Lake of the Woods; and also Grand Portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.”

It will be observed that by this agreement so much of the line as the Commissioners under Article VII of the Treaty of 1814 had agreed upon was adopted as the boundary, and that their disagreement as to the location of the line around St. George's or Sugar Island was settled by running the line there “so as to appropriate and assign the said island to the United States.” The other point of

disagreement between the Commissioners, involving the location of the line from Isle Royal in Lake Superior to Chaudière Falls in Rainy Lake, was settled by a compromise, avoiding the extreme northerly course proposed by the American Commissioner and the extreme southerly course proposed by the British Commissioner, and instead carrying the line through the Pigeon River route, which lay about midway between. The latitude and longitude of the most northwestern point of the Lake of the Woods as fixed by the Commissioners was accepted under this agreement, and has since been monumented.

In addition to adopting the portions of the line agreed upon by the Commissioners under Article VII of the Treaty of Ghent, thus giving the charts upon which the line had been delineated by those Commissioners a treaty value, the remaining portions of the line agreed upon by Webster and Ashburton were marked in ink by them on the original charts prepared by those Commissioners, covering such portions of the boundary. Each of the charts upon which the line was so marked was indorsed, apparently in Webster's handwriting: "Map of boundary agreed to by treaty, August 9, 1842," which indorsement was signed by both Webster and Ashburton, and along the line so marked by them on such charts was written: "Boundary under the Treaty of Washington."

In 1869 copies of charts Nos. XIII, XIV (with subchart attached), XV (with subchart attached), XVI, and XVIII of this series, certified to be correct copies by Col. Henry James, of the Royal Engineers, under date of February 5, 1869, were obtained from the British Government for the purpose of replacing the corresponding charts which were then missing from the American set. These certified copies, however, as has since appeared, were not reproductions of the British original treaty charts, but of another set of charts on file in the Foreign Office marked "incomplete set," the charts comprising which are apparently exact duplicates of the American treaty charts except that the boundary line as laid down in 1842 by Webster and Ashburton is not marked on them and they do not bear their signatures. The certified copies from this set, therefore, do not show the boundary line and have no treaty value.

When the question of the demarcation of this portion of the boundary came up for consideration before the Joint High Commission in 1898 Sir Richard Cartwright, one of the Canadian Commissioners, produced a series of maps indicating a continuous boundary line, marked in black, through the connecting waters all the way from Lake Superior to Chaudière Falls. These maps, he stated, had been copied from the originals in London by the Ordinance Office there. On them was shown the indorsement: "Map of



Boundary. Agreed to by Treaty August 9, 1842. (Signed) Ashburton. Daniel Webster." The signatures of Barclay and Porter, Commissioners under the Treaty of Ghent, were also shown. Mr. Kasson, who was the American member of the Joint High Commission subcommittee on the boundary question, reported the existence of these maps to the Department of State in a letter to Mr. Adee, dated October 5, 1898, in which he says:

"I am forced to believe that duplicates of these maps, with the original certificates of the negotiators of the Treaty of 1842, must exist somewhere in the Department of State."

Prior to that time for a number of years the fact that Webster and Ashburton had marked on maps any portion of the line west of Lake Superior had been lost sight of in the absence of any maps showing this portion of the line in the series filed with the Treaty of 1842 in the Department of State, and it had been assumed that no such maps existed. (See Mr. Adee's report of February 21, 1896, above referred to.)

Upon Mr. Kasson's report, however, a search was instituted and three of the missing maps—Nos. XIII, XIV (with an unnumbered submap attached), and XV (also with an unnumbered submap attached) of the series—were discovered in the Library of Congress, but the other two missing originals of the series (Nos. XVI and XVIII) were not with them and have not yet been found.

The boundary as shown on the original charts now on file in the Department of State is incomplete west of Lake Superior, from Lac la Croix to the Chaudière Falls in Rainy Lake.

An examination of the original charts filed with this treaty in the British Foreign Office was made there in August, 1906, and with the assistance of Mr. Brant, the Foreign Office Librarian, they were compared in detail with the reproductions of the United States' original set as published in the sixth volume of Moore on International Arbitrations. The examination disclosed the fact that the British set is actually the original set prepared and filed by Messrs. Porter and Barclay, the Commissioners under Article VII of the Treaty of Ghent, whereas the charts of the American set, although signed by Messrs. Porter and Barclay, are not identical in all respects with the original set, and bear a certificate to the effect that they are true copies of the originals, which certificate does not appear on the British set. The form of the certificate referred to will be found in the reproductions of the American set as printed in the sixth volume of Moore's Arbitrations, above referred to. The corresponding charts of both of these sets are signed by Webster and Ashburton

and the boundary line as marked on certain of the charts by them, and as adopted by them on the others where the line was agreed upon by Messrs. Porter and Barclay, corresponds in all essential particulars. The chief difference between the two sets is that on some of the British set triangulation lines are shown and distances given and a scale of yards and geographical and statute miles appears, and on almost every chart details, such as the names of points and islands, are given, none of which features appear on the corresponding charts of the American set.

Inasmuch as the boundary was marked by Webster and Ashburton on the two British original charts, of which the corresponding copies are still missing in the American set, it may safely be assumed that the boundary line was marked on them also. It appears, therefore, that the series of charts adopted by and forming part of the Treaty of 1842 show a complete delineation of the boundary as agreed upon in that treaty, covering the entire distance included under the seventh article of the Treaty of 1814. It is to be observed, however, that the boundary as agreed upon in the Treaty of 1842 was a water line throughout, so far as possible, and it is understood that its course is not shown on the charts wherever it is necessary for the line to cross the land, as in the case of the height of land referred to in Article II and across intervening portages between lakes having no water communication, which is reported to be the case in three instances.

Since the surveys made under the seventh article of the Treaty of 1814 the line from Pigeon River to the Lake of the Woods has never been surveyed or charted by joint action of the two Governments, and the actual location of the boundary has never been marked by monuments. (Note of January 29, 1901, from Secretary Hay to Lord Pauncefote.) A more complete delineation of this line, therefore, is necessary, both on maps and along the course of the boundary itself, and in order to perfect this portion of the boundary provision should be made for jointly surveying and monumenting the line throughout its entire course.

In a report made by Hamilton Fish when Secretary of State, dated February 23, 1877, it is stated that at that time the line from the Atlantic coast to the northwest angle of the Lake of the Woods had been surveyed and adjusted. (S. Ex. Doc. 41, 44th Cong., 2d sess.) This statement was erroneous so far as it concerns the line from Pigeon River to the Lake of the Woods, with respect to which the situation is as above stated. (H. Rept. 1310, 54th Cong., 1st sess.)

## SEPARATE SURVEY BY CANADA, 1896.

A statement is quoted in Moore's International Arbitrations, volume 1, page 236, with the apparent authority of the Minnesota Historical Society, to the effect that—

“The Canadian Government has not waited for a joint survey to inform itself concerning the actual condition of the boundary, but has quietly sent out a party of surveyors, at its own expense, to trace the line from Pigeon Point to the Lake of the Woods. The work was ordered by the Commissioner on International Boundaries, and is in charge of A. J. Brabazon.”

A report, dated February 1, 1897, was made by Mr. A. J. Brabazon to W. F. King, Canadian Chief Astronomer, on the international boundary from Pigeon River to the Chaudière Falls, a copy of which has been procured and is now on file in the Department of State. In this report he states as a result of his examination that all the details connected with this portion of the boundary are clearly set forth in the report of the Commissioners under the seventh article of the Treaty of 1814, and are shown on the maps of 1842 signed by Webster and Ashburton, except with respect to the description of the portages along this portion of the boundary, which he supplies in detail in this report. In regard to these portages he says:

“Of the thirty-one portages described in the report of the Commissioners under Article VII of the Treaty of Ghent, as proposed by the British Commissioner to be parts of the boundary between North Fowl and Rainy lakes, four cross islands, three are between lakes unconnected by water, one crosses a very indefinite creek, and twenty-three are along unnavigable portions of streams. It will be seen that of these streams fourteen will be on the Canadian and nine on the American side of the boundary.”

He then proceeds to designate the side of the boundary upon which the respective streams referred to would be placed, according to his understanding of its location.

There is no warrant in the description of the boundary as agreed upon in the treaty or in the course as indicated by the line drawn by Webster and Ashburton on the charts, so far as appears, for the statement that the boundary should follow the portages between lakes which are connected by water communications. In the cases of the height of land referred to in the treaty, and of the three portages between lakes unconnected by water, the boundary must necessarily take a land course. But to follow portages where water communications exist would be inconsistent not only with the rule that the line should be invariably a water line, which, as above

shown, was adopted by Commissioners Porter and Barclay with respect to the boundary under the sixth article, but also with the evident intent of Webster and Ashburton that the line agreed upon by them should be a water line, as indicated by the language used in describing the line in Article II of this treaty. This part of the line is described as running—

“to the mouth of Pigeon river, and up the said river to and through, the north and south Fowl Lakes, to the Lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water-communication to Lake Saisaginaga, and through that Lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams, *connecting the lakes here mentioned*”, etc.

In the absence of the missing original charts upon which the Webster and Ashburton line is supposed to be drawn, it is impossible to tell just what that line on those charts will show in this respect, but without positive evidence to the contrary it would be unsafe to assume that the line departed from the waterways in any instance where there was a waterway which it might follow.

Brabazon's report indicates that the line described by him is the one proposed by the British Commissioner under Article VII of the Treaty of Ghent, and he assumes that this line was adopted by Webster and Ashburton, which, however, is not shown to be the case, and this conclusion is not admissible as the matter now stands. It is true that following the description of the boundary agreed upon in the Webster-Ashburton Treaty provision is made in Article II as follows:

“It being understood that all the water-communications and all the usual portages along the line from Lake Superior to the Lake of the Woods; and also Grand Portage, from the shore of Lake Superior to the Pigeon river, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.”

No reference, however, is made to these portages as forming part of the boundary. The provision applies equally to the water communications whether part of the boundary or not, thus destroying any such inference.

In Brabazon's report it is also stated that he is satisfied from the examination made that—

“When an accurate survey of the lakes is made the positions and extent of many of the islands, bays, and channels will be found to differ considerably from those shown on the maps of 1842; yet, the boundary line as laid down on those maps is very easily followed.”

He further states in his report, as a matter of interest in connection with the question of monumenting this line:

“I may add that the lakes appear generally shallow, so that it will be possible in most cases to mark the boundary if marks are required in the water. The shores also are generally well adapted for defining the line by range marks.”

A copy of his maps referred to in, and accompanying the original report, have not been procured.

#### FREE AND OPEN NAVIGATION OF CERTAIN PORTIONS OF THE BOUNDARY WATERS PROVIDED FOR IN THE TREATY OF 1842.

Before passing from the Webster-Ashburton Treaty, and in connection with the provision therein just above referred to, making all the usual portages and waterways along the line from Lake Superior to the Lake of the Woods “free and open to the use of the citizens and subjects of both countries,” attention is called to a similar provision in Article VII of that treaty with respect to the navigation of certain portions of the contiguous boundary waters. Article VII is as follows:

“It is further agreed that the channels in the river St. Lawrence on both sides of the Long Sault Islands and of Barnhart Island; the channels in the river Detroit on both sides of the Island Bois Blanc, and between that Island and both the American and Canadian shores; and all the several channels and passages between the various Islands lying near the junction of the river St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both Parties.”

With respect to this provision it is important to note that in the course of the discussions by Messrs. Porter and Barclay, as Commissioners under the sixth article of the Treaty of 1814, they considered the question of including in their final award a—

“declaration to the effect that they had acted on the principle that the navigation of all the lakes, rivers, and water communications through which by the treaty of 1783 the boundary was to pass, should continue open and free to the citizens and subjects of the two powers, unaffected by the course of the line established by the award.” (Moore on International Arbitrations, vol. 1, p. 166.)

The purpose of this proposed declaration was stated to be not only to facilitate the conclusion of an agreement, but also to prevent future difficulties as to the right of navigation. The question was submitted to the two Governments and was acceded to by the President of the United States, but the British minister at Washington declined to sanction it on the part of his Government, on the ground

that such a declaration would tend to cast doubt on what his Government held to be a matter of right. It appears, however, from this provision in the Webster-Ashburton Treaty that ultimately both Governments came to the conclusion that it was desirable to make a specific provision for the use of the waters at the particular points indicated.

*Boundary channels apparently can not be dredged by either Government without the consent of the other.*

The provision for the free navigation of certain channels came up for consideration in 1893, in connection with the work undertaken by the United States in widening and deepening the channel at the Lime Kiln Crossing below Detroit, and removing obstructions in some of the lower channels, which improvements involved dredging to some extent on the Canadian side of the boundary.

It appears that in 1874 a plan was projected for a channel 300 feet wide, which was afterwards extended to the width of 440 feet, and this work was carried on under appropriations made by Congress, without reference to its relation to the international boundary line and without interference by the Canadian authorities, although no distinct understanding in regard to the matter was arrived at with the Canadian Government. In the summer of 1893, however, it was reported that the Canadian collector of customs at Amherstburg, Ontario, had intimated to the engineers in charge of the work that he was under instructions to seize any American plant working in Canadian waters (Secretary of War to Secretary of State, June 30, 1893), and on July 6, 1893, the Secretary of State wrote to the British ambassador urging—

“that permission be obtained from the Dominion authorities to proceed with the work of improvement along the best lines without regard to the exact location of the international boundary line.”

The question was referred to the Canadian Privy Council and the conclusions of that body, as stated in a subcommittee report approved August 8, 1893, were briefly as follows:

It is pointed out in this report that from the Canadian point of view the improved channel at the Lime Kiln Crossing was regarded as exclusively in Canadian waters under the boundary line fixed by the maps and description adopted by the Commissioners under the sixth article of the Treaty of Ghent. It was admitted, however, that the view adopted by the United States, on the other hand, was, as stated in the report made by the Chief Engineer, U. S. Army, on November 14, 1888 (S. Ex. Doc. No. 52 of 1889), that—

“All the channel opened by the United States at the Lime Kiln Crossing is in American waters, except the extreme northeast and southeast corners of the cut.”

The report of the subcommittee of the Privy Council then proceeds:

"By the seventh article of the Treaty of 1842 it was provided as follows: 'It is further agreed that the channel in the River St. Lawrence, on both sides of the Long Sault Islands and of Barnhart's Island, *the channel in the River Detroit on both sides of the Island of Bois Blanc and between that Island and both the American and Canadian shores*, and all the several channels and passages between the various Islands lying near the junction of the River St. Clair with the lake of that name, shall be equally free and open for the ships, vessels, and boats of both parties.'

"This provision, while disposing by the concession of mutual rights in the channels of the difficulties of boundary at the islands named, does not affect the boundary line south of those islands *where it would appear that the obstructions now to be removed exist*, nor does it affect the Lime Kiln Crossing, which lies north of them.

"It may thus be safely concluded that the present application of the United States Government is one which affects Canadian waters and which it rests with her to grant or to refuse."

In this connection it is stated that the reference to the question of the boundary line is made simply—

"in order that no misunderstanding may hereafter take place, leading to the assumption by the United States of any particular right to the waterways by virtue of the steps which it may now take to improve these channels."

The report concludes with a recommendation—

"that authority be given to the United States Government, in accordance with their present request, to proceed with the work of removing obstructions in this river, irrespective of the boundary line, such authority to be understood expressly as being given without prejudice to the possessory rights of Canada, as defined by the maps and declarations of the Commissioners under the Treaty of Ghent, made and done at Utica on the 18th of June, 1822."

A copy of the minute of the Privy Council granting the authority requested was inclosed by the British ambassador to the Secretary of State in his note of August 23, 1893, in which it is stated:

"The authority is granted without prejudice to the possessory rights of Canada as defined by the maps and declarations of the Commissioners under the Treaty of Ghent."

Subsequently, in the River and Harbor Act of June 13, 1902, Congress adopted a project for the improvement of the Detroit River from Detroit to Lake Erie, providing for a channel of at least 600 feet width and 21 feet low-water depth, following in general the channel already under improvement, but locating the side lines of

excavations so as to straighten the channel as far as practicable, and especially to eliminate the dangerous bends existing between the head of Lime Kiln Crossing and Bois Blanc Island. It was specifically stated in the project that the enlarged channel near Amherstburg would lie in Canadian waters, and that some claim for damages would be expected from property owners along the Canadian shores.

The situation as above outlined was called to the attention of the British ambassador at Washington by the Secretary of State in his note of April 7, 1904, in which it is further stated that—

“It appears that under the laws of Canada property rights in the land under navigable waters may be acquired by private parties, and that the owners of shore property on the Canadian side of the river, in the vicinity of Amherstburg, have deeds from the Crown for the adjacent submerged land, ‘to the channel bank,’ this submerged land being designated in the deeds as ‘water lots.’

“As the operations of this Government in Canadian waters are being conducted by the courtesy and with the consent of the Canadian Government, it is proper that this Government should take into consideration the rights of the owners of the submerged land under the laws of Canada, and acquire the right to excavate material within or across the private water lots. A fund considered ample to pay for the acquisition of this right has been set aside from the appropriations already made by Congress for the improvement. The lines bounding these water lots, and the channel lines which will result from the proposed improvements under the aforesaid adopted project, are shown on the accompanying maps.

“It is believed that an arrangement with the owners of the property for a grant to the United States of the privilege desired, and an adjustment of the question of compensation therefor, can be best accomplished by officials of the Canadian Government. I have therefore the honor to solicit your good offices to the end that you may be pleased to bring the matter to the attention of the Canadian Government and to commend it to their favorable consideration.”

It does not appear from the records in the Department of State that this note was ever answered or that the receipt of it even was acknowledged.

#### CESSION OF HORSE-SHOE REEF IN 1850 BY GREAT BRITAIN TO THE UNITED STATES.

On December 9, 1850, a conference was held at the Foreign Office in London between Abbott Lawrence, the United States minister, and Lord Palmerston, the Secretary for Foreign Affairs of Great Britain, at which it was agreed that Great Britain should cede to the United States Horse-Shoe Reef in Niagara River, just below the



outlet of Lake Erie, for the purposes and under the conditions expressed in the protocol of that conference, and which are therein stated as follows:

“Mr. Lawrence stated that he was instructed by his Government to call the attention of the British Government to the dangers to which the important commerce of the great Lakes of the Interior of America, and more particularly that concentrating at the town of Buffalo near the entrance of the Niagara River from Lake Erie, and that passing through the Welland Canal, is exposed from the want of a lighthouse near the outlet of Lake Erie. Mr. Lawrence stated that the current of the Niagara River is at that spot very strong, and increases in rapidity as the river approaches the falls; and as that part of the river is necessarily used for the purpose of a harbor, the Congress of the United States, in order to guard against the danger arising from the rapidity of the current, and from other local causes, made an appropriation for the construction of a lighthouse at the outlet of the lake. But on a local survey being made, it was found that the most eligible site for the erection of the lighthouse was a reef known by the name of the ‘Horse-shoe Reef’, which is within the dominions of Her Britannic Majesty; and Mr. Lawrence was therefore instructed by the Government of the United States to ask whether the Government of Her Britannic Majesty will cede to the United States the Horse-shoe Reef, or such part thereof as may be necessary for the purpose of erecting a lighthouse; and if not, whether the British Government will itself erect and maintain a lighthouse on the said Reef.

“Viscount Palmerston stated to Mr. Lawrence in reply, that Her Majesty’s Government concurs in opinion with the Government of the United States, that the proposed lighthouse would be of great advantage to all vessels navigating the Lakes; and that Her Majesty’s Government is prepared to advise Her Majesty to cede to the United States such portion of the Horse-shoe Reef as may be found requisite for the intended lighthouse, provided the Government of the United States will engage to erect such lighthouse, and to maintain a light therein; and provided no fortification be erected on the said Reef.

“Mr. Lawrence and Viscount Palmerston, on the part of their respective Governments, accordingly agreed that the British Crown should make this cession, and that the United States should accept it, on the above-mentioned conditions.” (Treaties and Conventions, p. 444.)

This arrangement was approved on behalf of the United States by Mr. Webster, then Secretary of State, in his note of January 17, 1851, to Mr. Lawrence, and the British Secretary for Foreign Affairs was so notified by Mr. Lawrence on February 10, 1851.

The necessary appropriations for the erection of the light-house were made by Congress (9 Stat. at L., 380 and 627; 10 Stat. at L., 343), and the light-house was erected in 1856.

This cession raises an interesting question as to its effect upon the boundary, and the status of the Reef with respect to the jurisdiction of the two countries. No mention is made in the negotiations or the final arrangements of any change in the boundary so as to include the Reef within the borders of the United States, but if the Reef is to be regarded as a part of the United States then a change in the boundary to so include it is necessarily implied. If, on the other hand, the Reef is to be regarded as property of the United States lying within the Dominion of Canada, then the boundary line would be undisturbed. In that case, however, the status of the Reef with respect to the criminal and civil jurisdiction of the respective countries would still remain to be determined. It does not appear that these questions have ever been raised, and they are not likely to become of practical importance so long as the United States continues to maintain a light-house there.

#### THE LOCATION OF THE BOUNDARY WITH RESPECT TO TWO ISLANDS IN LAC LA CROIX AND AN ISLAND IN THE LAKE OF THE WOODS.

Prior to the discovery of the existence of the missing Webster and Ashburton maps, showing the boundary in Lac la Croix, a question arose as to the nationality of Hunters and Coleman islands, in that lake, under the following circumstances:

About the year 1883 an American citizen had located as a settler on Coleman Island, understanding it to be within the borders of the State of Minnesota. Some time thereafter the provincial government of Ontario made a survey of timber along the boundary at that point and included Hunters and Coleman islands in the survey. This circumstance was reported to the United States Government, and on July 3, 1895, a note was written by Mr. Uhl, Assistant Secretary of State, to the British ambassador in Washington, calling the matter to his attention. In that note the question of the ownership of Hunters Island was not discussed, but with respect to Coleman Island it is stated that it appears impossible that the jurisdiction over it could legitimately become a subject of contention, and that—

“not only is its position well to the south of any natural boundary line passing through the waters of the Lac la Croix, but by continued occupation and governmental survey during many years a presumption of title on our behalf has been established, not to be set aside save upon the most absolute proof to the contrary, the burden of which necessarily would rest upon the Canadian authorities.”

It is further stated that “no chart of that portion of the boundary has ever been made by the two Governments jointly.” The subsequent discovery of the missing maps with the Webster-Ashburton

line marked on them makes a revision of this statement necessary, and also puts the claim of the United States with respect to these islands on an entirely different footing.

In Mr. Uhl's note above referred to he proposed that an "exact agreement" be reached between the two Governments—

"whereby this portion of the boundary line between the United States and Her Majesty's Dominion of Canada may be precisely marked, in accordance with the true intent of the contracting parties expressed in the Treaty of 1842, and having due regard to prescriptive rights of undisputed occupation within the reasonable limits of such boundary."

In this connection he called attention to the fact that the line through Lac la Croix as proposed by the British Commissioner under Article VII of the Treaty of 1814, which was shown on the certified copy of the subchart attached to No. XV, substituted in the American set for the missing original as aforesaid, placed both of these islands on the American side of the boundary. The subsequent discovery of the missing original of this chart shows that Webster and Ashburton adopted as the boundary the line so proposed by the British Commissioner, and the original chart with the proposed line marked on it was signed by them as one of the boundary charts under the Treaty of 1842. This would seem to dispose of the British claims with respect to these islands if it be found, as stated by Mr. Uhl, that they both are on the American side of such line.

In Mr. Adee's report of February 21, 1896, above referred to, this incident is fully discussed and the correspondence with respect to it is there printed.

The incident is also discussed in Moore's International Law Digest, Volume I, page 751, section 158.

In January, 1896, the Committee on Foreign Affairs of the House of Representatives made an inquiry of the State Department with respect to this question, and also generally with respect to the condition of the northern boundary, in connection with a concurrent resolution then pending in Congress, authorizing the President to enter into negotiations for the settlement of the boundary between the State of Minnesota and the British possessions.

In acknowledging the receipt of this inquiry, Mr. Olney wrote to the chairman of the Foreign Affairs Committee on January 24, 1896, stating, in accordance with the then accepted belief, which has since been proved erroneous, that—

"As is stated in the preamble of the resolution submitted, there has been no agreement between the two Governments delimiting the territorial dominion of each, from the mouth of the Pigeon River to

and through the water communication up to latitude  $49^{\circ} 23' 55''$  north, longitude  $95^{\circ} 14' 38''$  west, the point accepted in Article II of the Webster-Ashburton Treaty of 1842, as the definitive termination of the boundary of the Treaty of Paris, 1783, as ratified by Article VII of the Treaty of Ghent, 1814."

The letter continues:

"The rapid settlement of the territory adjacent to the boundary line, both in the State of Minnesota and the Province of Ontario, has already caused vexatious questions growing out of this undetermined line to arise, and renders it of great importance, in order to avoid collisions between the inhabitants and officials of the two countries, that a boundary line should be clearly marked and conventionally agreed upon.

"To this end negotiations have been in progress for some time, and it is the view of the Department that should an appropriation be made, in the event of the negotiation of a treaty for the purpose, to defray the expenses of a joint survey and commission to report upon an agreement founded on the true intent of the previous boundary treaties, as may be demonstrated by an accurate examination of the territory referred to, it would materially assist in the settlement of this unadjusted boundary."

In 1895 there also arose a question with respect to the nationality of another island adjacent to this boundary, known as Oak Island, in the Lake of the Woods. It was reported that the Canadian authorities were making surveys for the purpose of showing that the channel in the Lake of the Woods lay to the westward of this island, with the intention of claiming that the boundary line should follow the channel, thus placing the island on the Canadian side. Upon inquiry it was found that this report arose from a misapprehension, and it was stated on the part of the Canadian Government that the report was without foundation and that no such survey had been undertaken.

The Canadian position is stated in the minutes of the Privy Council, approved January 8, 1896, from which the following extract is taken:

"The minister further states that the only incident which has come under his notice which might have been instrumental in leading to rumor resulting in the representations to the United States Government, is connected with the issue of fishing licenses in Lake of the Woods.

"It has been claimed by certain parties and supported by the opinion of a number of old settlers that the boundary line followed the steamboat channel, and that such channel was south of Oak Island. Also, some inquiries were made at the time touching the identity of the island laid down as No. 1 in the boundary map with that commonly known as Oak Island. Beyond the authoritative establishment of the boundary as laid down in the conventions cited

by Mr. Secretary Olney, and of the identity of the island designated as No. 1, the department of marine and fisheries has had no concern whatever; neither has it in any way suggested an expansion of territory or jurisdiction beyond that conventionally conferred upon the Crown." (Foreign Relations, 1895, part 1, p. 725.)

For a statement of this case see Moore's International Law Digest, Volume I, page 752, section 158.

PROPOSALS FOR THE MORE COMPLETE DEFINITION AND MARKING OF THE ENTIRE BOUNDARY FROM THE ST. LAWRENCE AT THE FORTY-FIFTH PARALLEL TO THE NORTHWEST ANGLE OF THE LAKE OF THE WOODS, BY JOINT ACTION OF THE TWO GOVERNMENTS.

President Cleveland called attention in his annual message of December 2, 1895, "to the unsatisfactory delimitation of the respective jurisdictions of the United States and the Dominion of Canada in the Great Lakes at the approaches to the narrow waters that connect them," stating that "the waters in question are frequented by fishermen of both nationalities," and that—

"Owing to the uncertainty and ignorance as to the true boundary, vexatious disputes and injurious seizures of boats and nets by Canadian cruisers often occur, while any positive settlement thereof by an accepted standard is not easily to be reached."

And he declared that—

"A joint commission to determine the line in those quarters on a practical basis, by measured courses following range marks on shore, is a necessity for which immediate provision should be made."

Pursuant to this suggestion a joint resolution (H. Res. 41) was introduced in the House to provide for a commission to ascertain the boundary between Canada and the United States in the northern lakes, relating especially to the boundary in Lakes Ontario, Erie, St. Clair, Huron, and Superior, and it was in response to a request by the Committee on Foreign Affairs for suggestions or information from the Department of State on this subject that Mr. Adee's report of February 21, 1896, above referred to, was prepared.

The references in Mr. Adee's report to the line west of Lake Superior have been considered herein elsewhere. With respect to the boundary through the Great Lakes he says, in his report:

"The question of the boundary in the Great Lakes and at the approaches to the water communications is of a different character, being entirely practical and involving the location, upon the face of the water by any convenient ascertainment or process, of the treaty line as drawn upon the Ghent maps by the Commissioners, and

subsequently, as to a part of the line, by Mr. Webster and Lord Ashburton. The boundary lines so charted appear to have been drawn by the aid of rule and dividers upon the charts, and were the charts themselves correct in their measurements and delineations of the contours of the lakes it would be possible, by measured courses and distances from points on the shores, to locate upon the face of the water any particular spot selected in the line so drawn upon the map. The maps, however, are far from being accurate as to contours or dimensions. That of Lake Ontario, upon comparison with the most recent maps executed after exhaustive triangulations, is found to be reasonably accurate. It is noted as having been copied from the survey made in the years 1815, 1816, 1817, by Capt. H. A. W. Owen, of Her Britannic Majesty's royal navy. The chart of Lake Ontario is, however, not signed by the Commissioners.

"The Ghent map of Lake Erie is extraordinarily imperfect in contour and inaccurate in dimensions as to all that part lying between the entrance to the Niagara River and Port Pelee. It appears from a note thereon that the part west of Point Pelee and Sandusky, including all the islands, was reduced from the actual survey made by order of the Commissioners, and a separate chart of the lake westward of Point Pelee, showing the triangulations, and duly signed, is embraced in the Ghent series. The same footnote further states that 'the other parts of the lake (except the entrance into the Niagara River) are reduced from such printed maps as were supposed to be the most accurate.' That the Commissioners were misled in their estimate of the accuracy of the sources from which their map was compiled is evident upon simple measurement. For example, in that part opposite Long Point, referred to in the committee's letter of the 17th of January as a probable field for dispute, the distance from the northwesterly point of Presque Isle, near Erie, Pa., to the southern extremity of Long Point is found by the scale drawn upon the map itself to be about  $37\frac{1}{4}$  geographical miles, while upon the accurate modern maps, reduced from surveys made by the Army Corps of Engineers and published by the Hydrographic Office, the same distance is in fact a trifle less than 23 miles.

"This circumstance makes determination by measurement from either shore to the delineated boundary of the Ghent map impossible, for the distances so measured would overlap some 14 miles in the middle of the lake. Neither is an approximate reproduction of the Ghent line upon a modern map feasible, owing to the variations in the contours of the shores between which it must be drawn. This circumstance alone makes the exact determination of the charted treaty boundary in Lake Erie entirely impossible for the greater part of its length, and even in the narrow waters at either end only an approximate location can be determined.

"The original chart of Lake Erie, like that of Ontario, is unsigned by the Commissioners. It may, therefore, be properly said that as to the main body of those two lakes there does not exist a charting of the boundary having the force and value of treaty.

"The map of Lake Huron, however, is signed by the Commissioners, and the boundary marked thereon is expressly attested by them to be that designated by Article VI of the treaty. A note shows that but a very small portion of the contour of the lake, marked by

black lines, was actually surveyed. By far the greater part of its shore is shown by dotted lines, which the same note says were copied from the map of Mr. William Smyth, surveyor-general of upper Canada, and are not to be depended on.

"The small area of Lake St. Clair made its comparatively accurate triangulation and mapping a work of little difficulty, and the boundary traced on the map of that lake and attested by the Commissioners may be taken as a sufficient demarcation for all practical purposes.

"Lastly, the map of Lake Superior bears no note of the sources from which it was taken, but is simply designated a 'true map.' In practical application, however, it may be assumed that to locate upon the face of the water the line traced by Mr. Webster and Lord Ashburton would, for the greater part of its length, be no easy task.

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"So far as the maps of the Treaty of Ghent exhibit a charted boundary line attested by the Commissioners, they have been regarded as the ultimate authority under the treaty. They have been so recognized on several occasions, as for instance in 1903, when question arose touching the encroachment of a portion of the American Detroit River improvements upon Canadian territory, and in that instance the negotiations between the two Governments with respect to permission to so encroach were founded upon the line traced in the Ghent chart. They have also been appealed to as final authority in determining questions arising through the seizure of American nets and fishing vessels by Canadian cruisers. A recent case, arising near Sandusky, a short distance east of Middle Island, in Lake Erie, disclosed the fact that the fishermen, relying upon erroneous local maps, had set their nets almost due east of Middle Island, while the charted line trends southwesterly from that point. The courses and ranges recorded in the log of the Canadian cruiser indicated that the greater part, if not all, of the nets were, in fact, within Canadian treaty waters.

"In the application of this treaty boundary to actual facts and circumstances difficulty is found, for two reasons. The first is that the maps surveyed or copied by the Commissioners are not always accurate as to contours or distances, so that, as above mentioned, courses and measurements from given points on either shore, as compared with similar courses or measurements from other points, can not certainly locate upon an accurate modern map any designated point of the charted treaty line. While this difficulty is lessened in the narrow connecting waters, and the approaches thereto, it becomes insuperable, as has been shown, in respect to Lake Erie, and the same difficulty exists in less degree as to the other Great Lakes.

"In the second place, the charted treaty line is an arbitrary curve traced upon the maps prepared by the Commissioners, apparently by a somewhat tremulous hand, so that the curve is by no means regular, and the impossibility of locating any point upon such a curve by courses or distances or by range marks on shore is evident.

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"As to the district between Lake Superior and the Lake of the Woods, the Webster-Ashburton Treaty of 1842 should be a sufficient guide for the correct charting of the boundary by an international surveying commission. The concurrent resolution introduced by Mr. Town covers the latter point, and requests the institution of negotiations with the British Government looking to a joint survey and demarcation of this part of the treaty boundary. The joint resolution (H. Res. 41) appears to contemplate the establishment of the true boundary in the Great Lakes by a commission to be appointed by the United States alone. It is respectfully submitted that the result of such an inquiry and fixation of the line would have no international effect and could only be of service so far as it might indicate to this Government the ground to be definitely taken by it in the conduct of ultimate negotiations.

"It would seem preferable that a single joint resolution should also invite negotiation for a conventional fixation of the lake boundaries by courses, ranges, and distances in substitution for the imperfect line now drawn upon the Ghent maps."

No action on this recommendation was taken at that session of Congress.

*Negotiations by the Joint High Commission in 1898-99.*

The Commissioners on both sides were authorized by the official instructions issued to them by their respective Governments to agree to an arrangement for the more complete definition and marking of the boundary wherever it was insufficiently defined.

In the confidential pamphlet prepared for the information of the Commissioners on the part of the United States the following statement was made with reference to the boundary through the Great Lakes and at the approaches of connecting waterways:

"This boundary is defined under treaty conventions, and the line from the St. Lawrence River to the point in Lake Superior above referred to is traced on charts; but the charts of Lakes Huron, St. Clair, and Superior are the only ones signed by the Commissioners under the treaties, and the charts themselves, in their measurements and courses, are inaccurate, with the exception of the chart of Lake Ontario.

"The more complete definition of the boundary line throughout this portion of the frontier involves the location on the water of the lines drawn on the charts by the Commissioners under former treaties, and the marking of such lines by convenient ranges or otherwise.

"A practical difficulty will be presented in marking an arbitrary curved line on the face of the waterways, as indicated on the charts, and it has been suggested that courses, distances, and ranges should be substituted for the imperfect line now drawn on the Ghent maps."



The discussions of the Commission on this question appear in a special report prepared on the proceedings of the Joint High Commission. It is sufficient here to say that no agreement as to any specific arrangement was reached by the Commission. It was suggested, however, that inasmuch as the Commission could not itself complete this branch of the subject it should be referred to two commissioners appointed by the respective Governments, in order that it might be taken up from a scientific standpoint. On the line of this suggestion the subcommittee of the Commission in charge of this subject prepared the draft article set out below, which, however, was not submitted to the Commission. It provides for the appointment of one geographer or surveyor on each side to ascertain and mark the boundary line and report all points of agreement or disagreement to their respective Governments, and for a third commissioner to be named in case of a disagreement. This draft article is as follows:

“In order to provide for the amicable adjustment of possible differences and conflicts of jurisdiction in respect to the international boundary-line hereinafter described, it is agreed that whenever differences shall arise in respect to the precise limits of the respective national jurisdictions between the point where the boundary-line enters the Iroquois or St. Lawrence River and westward to Rainy Lake, as described in the Treaty concluded at Washington on the 9th day of August, 1842, and known as the Webster-Ashburton Treaty, and as further delineated on the maps certified by the signatures of Daniel Webster and Ashburton to be the maps of boundary agreed to by said Treaty, the high Signatory Parties shall each appoint one expert geographer or surveyor as a Commissioner, and the two Commissioners so appointed, after making oath in writing that they will impartially and faithfully perform this duty, shall by common accord proceed to ascertain the boundary-line so brought in question, and shall designate and mark the same in such manner, by monuments on land, or by marks or ranges from the shore where the boundary is a water-line, as shall be most practicable and certain, and shall make joint report of all points of their agreement and of their disagreement, if any, to both Governments. Their joint agreement shall be accepted as determining the line in question. In case of their disagreement, the High Contracting Parties shall agree upon a third impartial Commissioner, whose Award upon the point or points of disagreement shall be accepted as final. The reasonable expenses of such Commission shall be paid by the two Parties in equal moieties.”

*Later negotiations.*

Subsequent to the adjournment of the Joint High Commission some negotiations were had between the two Governments with a view to arranging for more completely defining and marking the entire boundary between the United States and Canada, from the Atlantic to the Pacific, and as appears from the correspondence

exchanged both countries were in accord as to the importance and advisability of providing for such action wherever it proved to be necessary. The question of the boundary through the Great Lakes was not particularly discussed, but the line between Lake Superior and the Lake of the Woods was specially referred to and the necessity for resurveying and marking this portion of the line was recognized. No formal agreement was entered into, however, and the question was not carried beyond the expression of a concurrence of views between the two Governments.

In connection with this discussion Mr. Kasson, who was the American member of the Joint High Commission subcommittee in charge of the boundary question, prepared a memorandum for Mr. Hay, which is dated August 7, 1900, and is now on file in the Department of State (bound volume of Miscellaneous Letters of August, 1900). In that memorandum Mr. Kasson, after referring to the missing original treaty charts of the Webster-Ashburton Treaty, makes the following suggestions:

“But even with their possession, there remains the need of definition by boundary marks of the line of portages, and other land lines, between and connecting the water lines crossing summit divides, etc.

“The ownership of certain islands in lakes and rivers north of Minnesota has been in dispute, but it is believed will be determined by the definite treaty line indicated on the missing maps above mentioned.

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“One other point is worthy of mention. There are at two points—perhaps more—obnoxious projections of national territory and jurisdiction beyond the general course of the boundary. It is possible that mutually advantageous exchanges of territory might be made to the marked improvement of the boundary demarcation, and to the convenience of the neighboring inhabitants. This suggestion occurred to the subcommission, but was not followed to any conclusion.”

In the proposed treaty which is now under consideration with reference to the inland fisheries it is provided in Article IV as follows:

“The two governments engage to have prepared as soon as practicable, charts of the waters described in this article with the international boundary line indicated thereon; and to establish such additional boundary monuments, buoys and marks as may be recommended by the commission.”

The waters referred to in this article, as the negotiations now stand, include nearly all the boundary waters throughout this portion of the boundary.

The International Water Ways Commission has lately undertaken to locate and mark by buoys certain portions of the boundary line in Lake Erie where disputes have arisen concerning fishing rights.

THE LINE AS SHOWN ON THE ORIGINAL TREATY MAPS  
REPRODUCED ON MODERN CHARTS.

In connection with the preparation of this report the boundary line as shown on the original treaty maps now on file in the Department of State has been traced on a series of modern charts of a sufficiently large scale to show the course of the line in detail, which charts were procured from the War Department for that purpose.

This series extends from the beginning of the line in the St. Lawrence River through the Great Lakes and connecting waterways to the mouth of Pigeon River in Lake Superior. Beyond this point it has been impossible as yet to procure accurate charts, or in fact any charts on a scale sufficiently large for the purpose. No maps showing the northern border of the State of Minnesota have been published under the authority of the government of that State. The War Department has made surveys of this region, but no charts available for the use for which they are desired have been prepared from such surveys. The Interior Department also has had surveys made under the direction of the General Land Office, but these do not extend beyond the edge of the waterways through which the boundary runs, except in certain instances where there are islands on the American side, and consequently the boundary line can not be shown to advantage on the charts prepared from these surveys.

Arrangements have been made to procure a series of recent maps showing the northern border of the State of Minnesota on a large scale, prepared unofficially but understood to be accurate, and when such maps are received the work of reproducing on modern maps the northern boundary as shown on the original boundary maps will be completed.

The line thus shown is, of course, without authoritative value, but it serves to indicate such deficiencies as may exist in the treaty definition or delimitation of any portion of the boundary. The actual marking of the line on these charts was done by arrangement with the Superintendent of the Coast and Geodetic Survey, who detailed a member of his staff for that purpose, and the work was done by him in an exceedingly skillful and satisfactory manner. His report on this work, dated March 26, 1906, is now on file in the Bureau of Rolls and Library of the Department of State, giving a detailed description of the original boundary maps now on file in the Department of State, and indicating the portions of the boundary not shown on such treaty maps.



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PART III.

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THE NORTHWESTERN BOUNDARY, FROM THE NORTH-  
WESTERNMOST POINT OF THE LAKE OF THE WOODS  
TO THE PACIFIC OCEAN.

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## THE NORTHWESTERN BOUNDARY, FROM THE NORTH-WESTERNMOST POINT OF THE LAKE OF THE WOODS TO THE PACIFIC OCEAN.

### BOUNDARY EAST OF THE ROCKY MOUNTAINS.

The treaties of 1782 and 1783 both provided, in identical terms, that the northern boundary of the United States should run from the most northwestern point of the Lake of the Woods "on a due west course to the river Mississippi."

It was supposed at the time these treaties were entered into that the source of the Mississippi River was far enough north to be above a line drawn due west from the point of departure fixed by these treaties for this line at the Lake of the Woods. Under these treaties the Mississippi River was taken as the western boundary of the United States, and the belief then prevailing that the headwaters of the Mississippi River were in British territory finds further expression in the provision granting to British subjects the right of navigation over the intervening waters of that river to the sea. It will be observed that this right of navigation was not renewed in the treaty of peace (Ghent, 1814) after the war of 1812, at which time it was known that the Mississippi River did not extend into Canada.

Some doubt had arisen in regard to the location of the headwaters of the Mississippi prior to the making of the Jay Treaty in 1794, and in consequence of such uncertainty it was provided in that treaty, in Article IV:

"Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States: it is agreed that measures shall be taken in concert between his Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty."

Subsequently, upon the purchase of the Louisiana Territory in 1803, extending the borders of the United States beyond the Mississippi River, it became necessary to make a further change in the description of the northwestern boundary, and an attempt was made to agree upon a description of that portion of the boundary by the treaty negotiated in 1807, which failed of ratification. (See Moore's *International Arbitrations*, vol. 1, pp. 69 and 201, and Moore's *International Law Digest*, Vol. V, Ch. XVIII, p. 721, sec. 835.)

No mention of this portion of the line is made in the Treaty of 1814, but in the Treaty of 1818 the boundary is fixed along the 49th parallel from the Lake of the Woods to the "Stony" (Rocky) Mountains, and all reference to the Mississippi River as fixing the location of any portion of the boundary is omitted. It was not definitely known even then, however, whether the most northwestern point of the Lake of the Woods, to which the earlier treaties carried the boundary, was north or south of the 49th parallel, and the description therefore provided that the line from that point should run due north or due south, as the case might be, to the 49th parallel, and thence along that parallel due west to the "Stony" (Rocky) Mountains. The provisions of the Treaty of 1818 with respect to this portion of the boundary are found in Article II and are as follows:

"It is agreed that a line drawn from the most northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel shall be the line of demarcation between the territories of the United States, and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains."

In the Webster-Ashburton Treaty of 1842, Article II, the latitude and longitude of the most northwestern point of the Lake of the Woods is fixed as north of the 49th parallel, and the description of the boundary from that point is stated as follows, in Article II of that treaty:

"Thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains."



## BOUNDARY WEST OF THE ROCKY MOUNTAINS TO THE COAST.

The location of the line west of the Rocky Mountains through the Oregon Territory, embracing what is now comprised in British Columbia and the States of Washington, Oregon, Idaho, and a part of Montana, was dependent upon the settlement of the Oregon question, which it is not necessary to review here. Pending the settlement of that question it was provided by Article III of the Treaty of 1818 as follows:

"It is agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two Powers: it being well understood, that this agreement is not to be construed to the prejudice of any claim, which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences amongst themselves."

This provision was indefinitely extended and continued in force by the Treaty of August 6, 1827, with the proviso that it might be annulled and abrogated by either party on giving twelve months' notice to the other party.

A brief statement of the several attempts which were made to arrive at a settlement of the Oregon question and the location of this boundary will be found in Moore's Digest of International Law, Volume V, Chapter XVIII, page 721, section 835. (See also Moore's International Arbitrations, vol. 1, pp. 201-215, and the Oregon Question by Sir Travers Twiss.)

President Polk, in his annual message on December 2, 1845, recommended that the joint occupation of the "Oregon Territory" be terminated. By a joint resolution of Congress approved April 27, 1846, passed with the view "that the attention of the governments of both countries may be the more earnestly directed to the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to said territory," the President was authorized "at his discretion to give to the government of Great Britain the notice required by the second article of the said convention of the sixth of August 1827 for the abrogation of the same." Notice of abrogation was communicated to the British Government on May 22, 1846.

A settlement of the question, however, had practically been agreed upon at that time, and within two months thereafter the Treaty of June 15, 1846, was concluded, carrying the boundary west of the Rocky Mountains along the 49th parallel to the middle of the channel between Vancouver's Island and the mainland, and thence through the middle of said channel and of Fuca's Straits to the Pacific Ocean.

The provisions of the Treaty of June 15, 1846, on this point are as follows:

"ARTICLE I. From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean; Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties".

The treaty further provides:

"ART. II. From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present treaty."

*Demarcation of the land boundary west of the Rocky Mountains.*

For reasons which need not be detailed here no joint action was taken by the two Governments for surveying and monumenting the northern boundary between the Pacific and the Lake of the Woods until 1856, and then the demarcation of that portion of the line west of the Rocky Mountains only was undertaken.

After a lapse of almost exactly ten years since the making of the Treaty of June 15, 1846, fixing the location of the line west of the Rocky Mountains Congress passed an act, approved August 11,

1856, to carry into effect the first article of the treaty referred to. This act provided for the appointment of a commissioner and a chief astronomer and surveyor on the part of the United States to unite with similar officers to be appointed by Her Britannic Majesty's Government, to survey and monument the boundary, and an appropriation of \$71,000 was made for that purpose. The proceedings of the Commission were limited to the demarcation of that part of the line which forms the boundary between Washington Territory and the British possessions. At that time the Territory of Washington, which was organized by act of Congress approved March 2, 1853, extended along the 49th parallel to the summit of the Rocky Mountains. (Sec. 1898, U. S. Rev. Stat.)

The Commission on the part of the United States was promptly organized under this law, and on February 14, 1857, Mr. Archibald Campbell was appointed Commissioner, which position he held continuously until the close of the work of the Commission in 1869.

Great Britain assented to the proposition for a joint commission, but owing to some delay in the appointment of the British Commissioner joint operations were not commenced until the summer of 1858.

The boundary as laid down from the surveys of this Commission is shown on a series of maps, seven in number, with an index map, one duplicate original set of which is on file in the Department of State at Washington. These maps are dated May 7, 1869, and are signed by the Commissioners and surveyors of the respective Governments. A photolithographic reproduction of these maps has been made and a small edition of such reproduction printed.

On February 24, 1870, Mr. Fish, the Secretary of State, and Sir E. Thornton, the British minister at Washington, joined in a written—

“Declaration approving and adopting the maps prepared by the Joint Commission of the Northwest Boundary for surveying and marking the Boundaries between the British possessions and the United States along the 49th Parallel of North Latitude, under the first article of the Treaty of 15th June, 1846.”

This declaration states:

“The set of maps, seven in number, which have been prepared by the Commissioners appointed by the two Powers to survey and mark out the Boundary between their respective Territories under the first Article of the Treaty concluded between them at Washington on the 15th of June, 1846, having been produced:

“And it appearing that they do correctly indicate the said Boundary from the point where the Boundary laid down in Treaties and Conventions prior to June 15th, 1846, terminates Westward on the 49th Parallel of North Latitude to the Eastern shore of the Gulf of Georgia, which Boundary has been defined by the Commissioners by marks upon the ground:

“The Undersigned, without prejudice to the rights of their respective Governments as to the settlement and the determination of the remainder of the said Boundary, hereby declare that the said maps certified and authenticated under the signatures of Archibald Campbell, Esquire, the Commissioner of the United States, and of Colonel John Summerfield Hawkins, Her Britannic Majesty’s Commissioner, and of which duplicate copies similarly certified and authenticated are in the possession of the Government of Her Britannic Majesty have been duly examined and considered, and, as well as the marks by which the Boundary to the Eastern shore of the Gulf of Georgia has been defined upon the ground, are approved, agreed to, and adopted by both Governments.”

In addition to these treaty maps there is also on deposit in the Department of State an atlas presented on June 23, 1871, by Sir Edward Thornton, then British minister in Washington, containing “maps of the land boundary between the British possessions in North America and the United States as established by the Treaty of Washington, 15th June, 1846, and surveyed and marked under the direction of the Joint Commission appointed to carry into effect the first article of the treaty,” etc.

The records of the work and proceedings of this Commission, so far as they have been preserved, consisting of manuscript, maps, computations, observations, sketches, notes, minutes, etc., are also on deposit in the Department of State, but as a history of the progress of its work they are somewhat incomplete. A report was made by the Commissioner on the part of the United States, but this report was not published, and it has now disappeared from the records in the Department of State and no trace of it can be found. No copy of this report has been preserved. (Letter of April 9, 1901, from Secretary Hay to Superintendent of the United States Coast and Geodetic Survey.) A concise history, however, of the establishment, survey, and marking of this portion of the boundary, with a summary of results, was prepared by Mr. Marcus Baker, of the United States Geological Survey, in the year 1900, from an examination of all the available records, “memoranda, notes, sketches, pictures, correspondence, and memories of men still living,” and has been published as Bulletin No. 174 of the United States Geological Survey, under the title “Survey of the Northwestern Boundary of the United States.”

#### *The boundary marks and monuments.*

The records of the Commission show that at the outset the Commissioners entered into the following agreement:

“After discussing plans for determining and marking the line as far eastward as the Cascade Mountains, it was concluded to be inexpedient at the present time, in consequence of the great expense,

consumption of time, and the impracticable nature of the country, to mark the whole boundary by cutting a track through the dense forest.

"It was therefore agreed to ascertain points on the line by the determination of astronomical points at convenient intervals on or near the boundary, and to mark such astronomical stations or points fixed on the parallel forming the boundary by cutting a track of not less than 20 feet in width on each side for the distance of half a mile or more, according to the circumstances. Further, that the boundary be determined and similarly marked where it crosses streams of any size, permanent trails, or any striking natural feature of the country.

"In the vicinity of settlements on or near the line it is deemed advisable to cut the track for a greater distance and to mark it in a manner to be determined hereafter."

With respect to this agreement, Mr. Baker says in his pamphlet:

"This arrangement for the part west of the Cascades appears to have been subsequently applied to the whole line; and thus it resulted that of the entire boundary, 409.5 miles long, from the boundary station on the crest of the Rocky Mountains westward to the obelisk on the western side of Point Roberts, 190 miles were cleared and marked and 220 miles were not traced out, cleared, surveyed, or marked. These figures are obtained by scaling off from the final maps."

The initial monument of the line thus marked was a granite obelisk erected at Point Roberts on the eastern shore of the Gulf of Georgia and the terminal monument was a stone pyramid erected on the crest of the Rocky Mountains "in a spot very difficult of access, and therefore better adapted to preserve it from being disturbed."

Between these points, distant 410 miles apart, the line was marked by 161 monuments of iron pillars, stone obelisks or pyramids, bench marks, earth mounds, or piles of stone and earth. The distance between these monuments varies somewhat, depending upon the character and requirements of the country.

From the records of this Commission it appears that the amount actually expended by the United States for the demarcation of this line amounted to nearly \$600,000, or about \$1,463 per mile. See appropriation acts as follows:

Act of August 11, 1856, U. S. Stat. at Large, vol. 11, p. 42.

Act of February 7, 1857 (*id*), p. 159.

Act of June 5, 1858 (*id*), p. 312.

Act of March 3, 1859 (*id*), p. 403.

Act of May 26, 1860 (*id*), vol. 12, p. 20.

The cost to the British Government of running and marking the line does not appear.

In a letter from the British Commissioner, J. S. Hawkins, to the British Secretary of State for Foreign Affairs, dated May 10, 1869, he describes the actual demarcation of the boundary line as follows:

"5. The actual demarcation was effected as follows: The western extremity of the boundary is marked by a substantial granite obelisk in west longitude  $123^{\circ} 3' 53''$ , which stands upon a steep cliff on the western face of the promontory of Point Roberts, about 160 feet above the sea. The several faces of the obelisk are inscribed as follows: On the north face with the names of Her Majesty's water and land boundary Commissioners, Capt. J. C. Prevost and G. H. Richards, R. N., and Lieut. Colonel J. S. Hawkins, R. E.; on the south face with the name of the American Commissioner, Archibald Campbell; on the west face with the designation and date of the treaty, viz, Treaty of Washington, 15th June, 1846, and on the east face with the latitude and longitude, and the year of erection, viz: Latitude  $49^{\circ} 0' 0''$  N., longitude  $123^{\circ} 3' 53''$  W., erected 1861. For  $44\frac{8}{10}$  miles eastward there are 42 iron pillars placed at points on the boundary which the officer to whom the duty was entrusted thought most suitable and convenient. One pillar stands on the eastern face of Point Roberts, 2 miles 704 yards from the obelisk, and there are two intermediate pillars in the interval at average distances apart of somewhat more than  $\frac{3}{4}$  mile. A pillar on the west shore of Semiahmoo Bay is 12 m. 1177 yards from that on Point Roberts on the opposite side of the bay; and thence in  $29\frac{3}{4}$  miles to the easternmost pillar the average distance apart is about 1,380 yards, varying between one mile 1,245 yards and 198 yards on the opposite banks of the Sumass River. These pillars all stand in a continuous cutting through the forest or in intervening patches of swamp and prairie. From the easternmost iron pillar to the right or west bank of the Similkameen River, in  $107\frac{9}{10}$  miles, the boundary is defined in the vicinity of 9 astronomical stations by 19 cairns or pyramids built of dry stones as carefully as the materials and circumstances would permit, and one bench mark cut on the face of a rock (at Ensak-watch); and at several stations short vistas were also cut in the forest, between the cairns. This wide interval comprises the rugged and inhospitable region of the Cascade Mountains, in which it would only have been possible to mark the boundary line more continuously by an expenditure of time and money out of all proportion to the object in view. One of the widest unmarked intervals on the boundary occurs in these mountains, between Passayten and Naisnuloh, the distance between the marked points being  $23\frac{7}{10}$  miles; and this might have been obviated by placing a station on the main or western branch of the Naisnuloh River, which, however, would have prolonged the work of the British Commission by another season.

"From a cairn at the foot of the mountains on the west side of the Similkameen River to the east or left bank of the Columbia, the boundary for the 95 miles is well and continuously marked by 69 stone cairns and one mound of earth, and by forest cuttings in all necessary cases. This was the most favourable portion of the work, part of the line passing over rolling prairie country interspersed with wood; but very considerable portions were also mountainous, rugged, and heavily timbered, though more accessible from the valley of the

Newhoialpitkwn River than were the Cascade Mountains. Two cairns stand within 129 yards of each other on the east bank of the Columbia River (one having been placed by each Commission) and the average distance apart of the remainder is 1 mile 679 yards. From the hill tops the line of boundary defined by the cairns and cuttings can be traced for many miles.

"For the remaining  $161\frac{8}{10}$  miles between the eastern cairn on the left bank of the Columbia River and the terminal point on the watershed of the Rocky Mountains in west longitude  $114^{\circ} 3' 28''$  the boundary passes over successive mountain ranges intersected only by the valley of the Kootenay River at two points  $75\frac{3}{4}$  miles apart, and by the adjacent valleys of the Flathead River and its tributary Kishenehu Creek, by which alone the 49th parallel is practically accessible, though even then by long circuitous routes. This portion of the line is marked in the vicinity of 9 astronomical stations by 26 cairns and one bench mark cut in the face of a rock at the Kootenay Mtn. station, and by a cairn fixed by survey on the trail between Kootenay West and Mooyie stations; and the usual forest vistas were cut at the several defined points, besides longer cuttings of 10 and 7 miles at the eastern crossing of the Kootenay, and between the Flathead and Kishenehu rivers. No better means for marking the eastern end of the boundary were at command than by a dry stone pyramid of the usual description, which was built as carefully as possible, and which may be preserved for many years by its protected situation on a narrow saddle with precipitous sides connecting two lofty mountains, which position will moreover serve to identify the approximate locality of the boundary at any future time. Between the Columbia and the Rocky Mountains, exclusive of the Mooyie trail cairn, and the intervals between Kootenay Mountain and Kootenay West stations and Mooyie and Yahk stations, the distances between the consecutively marked points at the several astronomical stations average about  $13\frac{1}{4}$  miles; but between the stations named they extend to 25 and 24 miles, owing to the inaccessible nature of the intervening country, which is quite as bad as the Cascade Mountains.

"6. Having thus described the manner in which the land boundary has been marked from end to end, I respectfully request your lordship's consideration of the 3rd article of the closing protocol, by which the Commissioners agreed to understand the boundary laid out by them to consist of a series of straight lines between the successively marked points, without regard to the distances between those points or the curve of the parallel in the longer intervals. We were induced to do this upon the consideration that it was of the greatest importance nothing should be left for *future* discussion or settlement, and that our operations should be final and conclusive. Even had the boundary line been continuously marked throughout by defined points, at say a mile apart, the actual parallel would have been departed from by the straight lines or chords joining such lines upon it; and owing to the insuperable difficulties attending a more minute demarcation in the rugged country traversed by us we have been compelled to adopt a more irregular and longer-sided polygon than we should have wished. I may state that opposite the centre of a chord of 25 miles in length the departure

from the 49th parallel would be about 40 yards, and of 12 miles 9 yards, which in such country and under present circumstances is of no appreciable value, and this even would be materially affected by the very great uncertainty attending the precision of the astronomical results previously alluded to; so that I hope our definite action in the matter will be fully approved. The points being identified, they can be joined at any time with no greater difficulty than attends the running of a straight line between two *fixed* points over a rough country, and sometimes for a considerable distance, but no scientific question would be involved in the operation, which could be performed by any careful surveyor."

In the same letter he renewed a suggestion which was made by him in an earlier letter to the Secretary of State for Foreign Affairs, dated August 4, 1862, which suggestion as made in the later letter is as follows:

"7. The above remarks lead me to request your lordship's further consideration of the necessity of entering into a convention with the United States, supplementary to the treaty of the 15th June, 1846, declaratory of the boundary marked out by the Joint Commission, being *the* boundary of the treaty, notwithstanding any possible departures from the actual line of the forty-ninth parallel. The more than probability that such departures unavoidably exist is alluded to above, and in previous reports; and the necessity for a supplementary convention was suggested by me in the concluding paragraph of my letter No. 28 of the 4th August, 1862, and recognized by Her Majesty's government in a letter from the treasury to Mr. Hammond, dated 26th September, 1862."

The protocol of the closing sessions of the Joint Commission, which is signed under the date of May 7, 1869, by both Commissioners, contains the following recitals:

"1. The astronomical and geodetical determinations of the several astronomical stations, and of the points on the forty-ninth parallel of north latitude by which the boundary has been defined between its western terminus at Point Roberts in west longitude  $123^{\circ} 3' 53''$  and its eastern terminus on the watershed of the Rocky Mountains in west longitude  $114^{\circ} 3' 28''$ , agreed upon and exchanged in May, 1863, between Captain R. W. Haig, R. A., chief astronomer of the British commission, and G. Clinton Gardner, assistant astronomer and surveyor to the United States Commission, having been carefully compared and corrected, are finally adopted, and lists of them are countersigned (2) and hereunto attached.

"2. The two sets of seven maps prepared severally by the respective commissions upon the above-named data on a scale of 1:120,000, having been carefully compared and countersigned, are hereby declared to represent so much of the boundary described in the first article of the treaty between Her Britannic Majesty and the United States of America, dated 15th June, 1846, as is comprised between the intersection of the watershed of the Rocky Mountains by the forty-ninth parallel of north latitude in west longitude  $114^{\circ} 3' 28''$



and the point at which the 49th parallel of north latitude strikes the eastern shore of the channel which separates the continent from Vancouver's Island in west longitude  $123^{\circ} 3' 53''$ .

"3. It is agreed by the Commissioners that, between any two successive defined points marked on the ground shown on the maps, and set forth in the accompanying lists, the line of boundary above described is to be understood to be a right or straight line; and that this rule is to apply throughout the entire boundary without regard to the distances between the consecutive points or to the course of the parallel in such intervals."

THE WATER BOUNDARY FROM THE FORTY-NINTH PARALLEL OF  
NORTH LATITUDE WHERE IT STRIKES THE GULF OF GEORGIA  
TO THE PACIFIC OCEAN.

This portion of the boundary is described in the Treaty of 1846 as follows:

"thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties."

Just below the Gulf of Georgia, as the channel between Vancouver's Island and the mainland is now called, there lies an archipelago among the islands of which there are several channels which connect the waters of the Gulf of Georgia with the Strait of Juan de Fuca. Almost immediately after the Treaty of 1846 was made doubt arose as to the course of the boundary through these several channels. The respective positions of the two Governments on this question and the course of the negotiations for its adjustment are stated at length in Moore's *International Arbitrations*, volume 1, pages 213-224.

It seems that at the time when the treaty was made only two of these channels had been surveyed and marked. These were known as Canal de Haro and a channel to the east known as Rosario Strait. On the part of Great Britain it was claimed that the boundary should run through this latter channel, which was the most easterly of all the connecting channels, and on the part of the United States it was claimed that the Canal de Haro, the most westerly, was the course intended.

An unsuccessful attempt was made to settle the disagreement between the two countries on this point by the appointment of a Joint Commission for running the line. This Commission was appointed concurrently with the Commission for marking the land portion of the boundary under the Treaty of 1846, but the Commissioners were unable to agree. The American Commissioner refused to accept any other channel than the Canal de Haro, and rejected a

compromise offer of an intermediate channel proposed by Great Britain.

During the succeeding years negotiations for the settlement of this boundary dragged along without much advancement, and there being no prospect of an agreement Great Britain finally proposed arbitration by the King of the Netherlands, the King of Sweden and Norway, or the President of Switzerland. This proposition was not accepted by the United States.

In 1869 a convention between the two countries was concluded for the submission of the boundary question to arbitration by the President of the Swiss Confederation, but was not approved by the United States Senate. The question was still open, therefore, when the Joint High Commission between the United States and Great Britain met in Washington in 1871 and was taken up at that time.

By Articles XXXIV–XLII of the Treaty of 1871, agreed upon by that Commission, the question was referred to arbitration by the Emperor of Germany to decide finally and without appeal which of the respective claims was most in accordance with the true interpretation of the Treaty of June 15, 1846. The German Emperor accepted the office of arbitrator. George Bancroft, then United States minister at Berlin, was detailed to represent the United States, and Admiral James C. Prevost was appointed to represent Great Britain on this arbitration. The positions and arguments on the part of the two countries do not require an examination for the purposes of this report. They will be found stated at length in Moore's *International Arbitrations*, volume 1, pages 224–235. The award of the German Emperor was made on October 21, 1872. It recites that after an examination of the treaty and the evidence and arguments, etc.—

“most in accordance with the true interpretation of the treaty concluded on the 15th of June, 1846, between the governments of Her Britannic Majesty and of the United States of America is the claim of the Government of the United States that the boundary line between the territories of Her Britannic Majesty and the United States should be drawn through Haro Channel.”

By a protocol signed March 10, 1873, by Hamilton Fish, Secretary of State, Sir Edward Thornton, British minister to the United States, and Admiral Prevost, the boundary Commissioner on the part of Great Britain, the line as finally fixed and determined was fully defined and described in detail. It was also marked on four identical charts prepared for the purpose, which were duly signed and two were retained by each Government. The two retained by the United States are deposited in the Department of State. A reproduction of the charts is published, together with the protocol, in *Foreign Relations*, 1873, Volume I, page xxv. (See also Moore's *International Arbitrations*, vol 1, p. 231.)

SURVEYING AND MARKING THE BOUNDARY FROM THE LAKE OF  
THE WOODS TO THE ROCKY MOUNTAINS.

Under the Treaty of 1818 the 49th parallel of north latitude was agreed upon as the boundary between the Lake of the Woods and the Rocky Mountains, and in the Treaty of 1842 the actual location of the northwest corner of the Lake of the Woods was fixed as north of the 49th parallel and the direction of the line from that point to such parallel was determined.

No joint action for the physical demarcation of this portion of the boundary, however, was taken by the two Governments until 1872, when Congress passed an act, approved March 19 of that year, authorizing the President to cooperate with the Government of Great Britain in the appointment of a joint commission to survey and mark this portion of the line. With the cooperation of Great Britain the joint commission authorized under this act was soon thereafter organized. Archibald Campbell was appointed Commissioner on the part of the United States and D. R. Cameron, Major, R. A., was appointed Commissioner on the part of Great Britain. The chief astronomer of the Commission on the part of the United States was Maj. F. W. Farquhar, afterwards succeeded by Maj. W. J. Twining, and on the part of Great Britain Capt. S. Anderson, of the Royal Engineers.

The first meeting of the Joint Commission took place in September, 1872, and the final meeting was held at London, May 29, 1876. The protocol of this final meeting sets forth the following statement showing the outcome of the work of the Commission, the list of official documents and records prepared and filed by the Commission and the disposition made of them, the method pursued in determining the location of the line, and the method to be pursued in relocating any portion of the line in case of the loss or obliteration of any of the boundary monuments:

“1. The chief astronomers submit the following documents and maps:

“*a.* A detailed list in duplicate of forty astronomical stations, in addition to one for the location of the most northwestern point of the Lake of the Woods, at which observations were taken under their superintendence, to determine the line described in the second article of the convention of London (signed October 20, 1818), between the terminal points, viz, the most northwestern point of the Lake of the Woods and the eastern end of the international boundary-line previously marked between Akamina, in the Rocky Mountains, and the western coast of North America.

“*b.* A descriptive list in duplicate of three hundred and eighty-eight (388) monuments and marks placed on the boundary-line, as derived from the astronomical stations enumerated in the list referred to in section *a* of this paragraph.

"c. A duplicate set of twenty-four maps on a scale of  $\frac{1}{126720}$ , or 1 inch to 2 miles, illustrating the topography of the country through which the boundary-line runs, and indicating the relative positions of the various monuments and marks referred to in section *b* of this paragraph.

"2. The second article of the convention of London, signed 20th October, 1818, is read, as follows:

"It is agreed that a line drawn from the most northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west, along and with the said parallel, shall be the line of demarkation between the territories of His Britannic Majesty and those of the United States, and that the said line shall form the southern boundary of the said territories of his Britannic Majesty and the northern boundary of the territories of the United States, from the Lake of the Woods to the Stony Mountains.'

"The duplicate documents and maps enumerated in paragraph numbered 1—one set for each of the respective governments—having been examined and compared, are authenticated by the signatures of the commissioners, who agree as follows:

"1. The three hundred and eighty-eight monuments detailed in the list referred to in section *b* of paragraph numbered 1, are on and mark the astronomical lines stipulated by the second article of the convention of London (signed October 20, 1818) to be the line of boundary between the territories of Her Britannic Majesty and of the United States of America, from the Lake of the Woods to the Stony (i. e. Rocky) Mountains.

"2. In the intervals between the monuments along the parallel of latitude, it is agreed that the line has the curvature of a parallel of 49° north latitude; and that such characteristic shall determine all questions that may hereafter arise with reference to the position of the boundary at any point between neighboring monuments.

"3. It is further agreed that, in the event of any of the said three hundred and eighty-eight monuments or marks being obliterated beyond the power of recognition, the lost site or sites shall be recovered by their recorded position relatively to the next neighboring unobliterated mark or marks." (S. Ex. Doc. No. 41, 44th Cong., 2d sess.)

The duplicate original set, belonging to the United States, of the twenty-four sectional maps covering this portion of the boundary, which were prepared and filed by the Commission as above stated, is now among the other sets of treaty maps in the Department of State. A photolithographic reproduction of these maps has since been published by this Government.

No joint report was made by the Commissioners, but separate reports by the Commissioner and the chief astronomer on the part of the United States were made to this Government, and these reports,

together with the other official records of the proceedings of the Commission on the part of the United States, on file in the Department of State, were communicated to Congress by President Grant in a special message, dated February 23, 1877, and will be found printed in Senate Executive Document No. 41, Forty-fourth Congress, second session. These reports and records were afterwards reprinted in enlarged form, with illustrations and maps, and published by the United States Government in accordance with an act of Congress approved March 3, 1877.

SUBSEQUENT NEGOTIATIONS AND ARRANGEMENTS FOR RE-MARKING THE LINE FROM THE LAKE OF THE WOODS TO THE PACIFIC OCEAN.

The question of the more complete definition and marking of the entire boundary between the United States and Canada wherever it was insufficiently defined was one of the subjects submitted to the Joint High Commission in 1898-99 for settlement, but the further demarcation of this particular portion of the line did not come up for consideration at that time. Soon after the adjournment of the Joint High Commission, however, the British ambassador informed Secretary Hay, in his note of July 23, 1900, that the Canadian Government desired—

“to join with the Government of the United States in an examination of the whole of the southern boundary of Canada for the purpose of re-establishing the lost monuments and of placing such supplementary monuments as may appear necessary to meet modern requirements.”

This portion of the line was particularly referred to among others, and in connection with this proposal it was stated that—

“many complaints have been made from time to time of the disappearance of monuments and the consequent difficulty of determining the exact position of the boundary, while the British Columbia portion of the line was in November, 1892, the subject of a formal request by the Lieutenant-Governor in Council for not only a re-establishment of lost posts, but also for an additional or supplementary survey, on the ground that the demarcation by the Commissioners was not sufficiently complete for modern requirements.”

*West of the Rocky Mountains.*

This suggestion was supplemented by a note on January 14, 1901, from the British ambassador to the Secretary of State calling attention to the importance that joint measures be taken for the examination of the whole of the 49th parallel of latitude west of the Rocky Mountains with a view to the better demarcation of this boundary, and more especially at three points, to wit: (1) Near

Tobacco Plains, in the East Kootenai District; (2) between Grand Forks and Midway; and (3) near Chilliwack, north of Mount Baker.

Secretary Hay replied, on January 29, 1901, acquiescing in the suggestion and stating that—

“the inconveniences and uncertainties attending the absence of boundary marks in many places of the northwestern line which were unsettled and virtually inaccessible when the Commissioners under the Treaty of 1846 set the line, but to which the discovery of mineral deposits is now attracting settlers, have been lately brought with urgency to the attention of this Government, and the suggestion of a joint demarcation was under consideration at the time of the receipt of your note.”

He expressed the opinion, however, that the proposed joint action of the two Governments would require an express convention, and suggested that such convention should provide for the relocation or ascertainment of all the defective parts of the western boundary under existing treaties from Lake Superior to the Pacific Ocean. He also stated that—

“It is the purpose of the United States Government to dispatch forthwith to the State of Washington a surveying party to make a reconnaissance of the region through which the boundary parallel runs, to the end that the information so to be procured may be made use of for the purposes of the suggested convention, or to aid toward the conclusion of an intervening partial delimitation as a *modus vivendi*.”

In this connection Secretary Hay requested that this Government be supplied with copies of the pertinent field notes and maps preserved by the British Commissioners who took part in the western division of the northwestern survey.

In answer to Secretary Hay's proposal, the British ambassador wrote on April 4, 1901, stating that the proposal was in accord with the desire of the Canadian Government as previously expressed, differing therefrom only in the proposition that the action necessary should be provided for by a formal convention, and on behalf of the Canadian Government he acceded to that proposition. In response to the request for copies of the field notes and maps of the British Boundary Commission on the western division of the boundary, the Canadian Government reported that there did not appear to be any record of the work done on this portion of the line with the exception of a volume of maps printed in the Ordnance Survey Office at Southampton, a copy of which was preserved in the Canadian Department of the Interior, which volume contained in addition to the maps—

“a list of monuments, their distances apart, their geographical and topographical positions, and their kind, whether iron, stone, or earth.”

Photographic copies of these maps and documents were offered to the United States Government if desired. It was further stated that—"a search was made in London a few years ago by an officer of the Department of the Interior for field notes of this line, but without success."

The request for copies of these documents was subsequently withdrawn for the reason, as appears in Secretary Hay's note of April 17, 1901, to the British ambassador, that after consultation with the Superintendent of the Coast and Geodetic Survey the conclusion was reached that the information contained in the maps and documents referred to was on file in the Department of State. (See also letter of April 11, 1901, from Charles D. Walcott, Director of the United States Geological Survey, to the Secretary of State.)

On April 3, 1902, Secretary Hay wrote to the British ambassador to inform him that during the past year the contemplated examination above referred to of the boundary had been completed by officers of the Government, "who made a careful survey of the boundary along the 49th parallel west of the Rocky Mountains to its western terminus on the coast," and that their report disclosed the fact that the original monuments were for the most part in a good state of preservation and the location of those which had disappeared could be recovered. He sums up the situation as follows:

"It appears, therefore, that the boundary established by the Joint Commission under the Treaty of 1846 is at the present time marked by visible monuments at irregular intervals, and that what remains to be done in order to render the marking thoroughly effective for the requirements of the present time and of the future is merely the replacement of the old monuments by more permanent ones and the interpolation of intermediate monuments at convenient points along the existent established boundary."

In view of the situation thus disclosed, Secretary Hay withdrew his earlier suggestion that a new convention was necessary for the demarcation of the boundary, stating that under existing conditions it seemed practicable—

"to provide for the immediate marking of the boundary by the joint action of competent field parties appointed to that end by the respective Governments;"

and, in conclusion, he suggested that on the part of Canada an officer or officers be designated to—

"confer with the Superintendent of the United States Coast and Geodetic Survey and the Director of the United States Geological Survey for the purpose of arranging necessary details for restoring the original monuments and establishing additional ones in order to improve and render more effective the boundary marked and agreed upon by the Joint Commission of 1856 to 1869."

It will be observed that Secretary Hay's proposal as here made related only to the portion of the boundary west of the Rocky Mountains. The British embassy, however, in notifying the Department of State of Great Britain's acceptance of the proposal, seems to have assumed that it applied to the entire distance from Lake Superior to the Pacific, and with that understanding Mr. W. F. King, Chief Astronomer of the Canadian Department of the Interior, was designated as the representative of the British Government to arrange details and carry out the work. (Note of August 9, 1902, Mr. Raikes to Mr. Adee.)

In acknowledging the notification of Mr. King's appointment, with respect to the entire boundary from Lake Superior to the Pacific Ocean, the Department of State on August 13, 1902, in turn informed the British embassy that "the representative of the United States for this work is Mr. Otto H. Tittmann, the Superintendent of the United States Coast and Geodetic Survey."

Under the sundry civil appropriation act approved March 3, 1903, however, Congress authorized only the work of marking and mapping that portion of the 49th parallel between the summit of the Rocky Mountains and Point Roberts, and on June 9, 1903, Secretary Hay authorized both Charles D. Walcott, Director of the United States Geological Survey, and O. H. Tittmann, Superintendent of the United States Coast and Geodetic Survey, "to sign as United States Commissioners in all matters relating to the work of marking and mapping that portion of the boundary, including the signature with the British Commissioner of the final report and maps."

The arrangements for the joint action of the two Governments in remonumenting and otherwise marking the boundary from the Rocky Mountains to Point Roberts were soon thereafter perfected by the Commissioners above named on the part of each Government, and under their direction the work has since been carried on and is understood to be now nearing completion.

#### *East of the Rocky Mountains.*

The question of re-marking this portion of the line has not been carried beyond the expression of a concurrence of views between the two Governments as to the desirability of joint action in that direction, with the exception of the resurvey at the point referred to below.

On November 14, 1905, Mr. W. F. King, the Commissioner appointed as above stated to represent Canada in any joint action that might be undertaken in remonumenting this part of the line, wrote to Mr. Tittmann, the Superintendent of the United States Coast



and Geodetic Survey, stating that he had been requested to mark the boundary line along the 49th parallel at North Portal Station on the St. Paul and Moose Jaw branch of the Canadian Pacific Railroad, in longitude about  $132^{\circ} 30'$ , not very far from the middle of the prairie section of the boundary line, and that if it was agreeable to Mr. Tittmann and Doctor Walcott, who were the Commissioners appointed on the part of the United States to supervise the remarking of the line west of the Rocky Mountains, he would send a surveyor to mark the line at the point indicated, with the understanding that this marking was temporary, pending the making of the joint survey.

Mr. Tittmann notified the Secretary of State on November 17, 1905, of the receipt of this note, expressing the opinion that he deemed it desirable to conduct such operations jointly for obvious reasons, but calling attention to the fact that the appropriation made for the survey of the 49th parallel west of the Rocky Mountains was not applicable to surveys between Lake Superior and the Rocky Mountains. On the following day the Secretary of State wrote to the Secretary of Commerce and Labor requesting that the Superintendent of the Coast and Geodetic Survey be detailed to carry out the wishes of the Department of State in making the proposed survey at and in the neighborhood of Portal, N. Dak. This was done and the work was undertaken as proposed, and it is understood to be now nearing completion.

#### SEVERAL SMALL SECTIONS OF UNITED STATES TERRITORY SEPARATED FROM THE UNITED STATES BY THE BOUNDARY AS LAID DOWN AT THE NORTHWEST ANGLE OF THE LAKE OF THE WOODS.

A question of considerable importance and interest has arisen in connection with the course of the line from the northwesternmost point of the Lake of the Woods south to the 49th parallel.

The course of the boundary from Lake Superior through the Lake of the Woods as it approaches the northwesternmost point passes in several instances back and forth across the line drawn due south from the northwesternmost point to the 49th parallel, thus making a series of loops embracing small sections of water and land in some instances, which, strictly speaking, lie on the American side of the boundary lines but are entirely surrounded by Canadian territory.

On April 26, 1904, Mr. W. A. Richards, Commissioner of Public Lands in the Department of the Interior, wrote to the Secretary of the Interior, calling this circumstance to his attention. He stated in regard to it that his office had theretofore proceeded on the theory

that the lands within these loops belonged to the United States, and he was inclined to adhere to that conclusion; but, as the question was not entirely without doubt, he requested that it be given serious consideration before definite action was taken to dispose of the sections of land referred to. These lands, he stated, had been surveyed by this Government as a part of the Chippewa ceded Indian lands to be disposed of under the act of January 14, 1889 (27 Stat. 642), as amended by the act of June 27, 1902 (32 Stat. 400), known in the Land Office records as Lot I, sec. 10, T. 168 N., R. 35 W., 5 P. M.

The question was thereupon referred, on May 21, 1904, to the Secretary of State, with a request for the views of the Department in regard to it. An opinion on the question was thereafter rendered by the Solicitor for the Department of State, from which opinion the following extract is taken:

"But the line described in the Treaty, running from Rainy Lake to the said most northwest point was a meandering line, hence as it approached to within about one mile from the northwest point it crossed and recrossed the meridional boundary line thereby enclosing small parcels of land in the loops formed by the intersections of the meandering and the meridional lines.

"One of these parcels containing twelve and five one-hundredth ( $12\frac{5}{100}$ ) acres has been surveyed by the Land Office, as a part of the Chippewa ceded Indian lands which are to be disposed of pursuant to the Act of Congress of January 14, 1889, as amended by the act of June 27, 1902. The question raised is whether this parcel belongs to the United States or Canada, and involves the question of jurisdiction between the two Governments.

"It has been suggested that since it was the intendment of the treaty to settle finally the continuous boundary line between the two countries, all that portion of the line described in the treaty which lies north of the first intersection of the meandering and the meridional lines should be rejected. This would leave a single continuous boundary line running along the line described from Rainy Lake to its first point of intersection with the meridian line, thence south along the meridian line to the 49th parallel, thence west to the Rocky Mountains. This interpretation would set aside all that portion of the described meandering line which extends from the first point of intersection to the northwest point and would also set aside the northwest point as a point in the boundary line mentioned in the three treaties, and would convert it into a mere starting point to find the boundary line.

"If either the United States or Canada should attempt to exercise jurisdiction over either of the small conclaves within the loops, the title to which each Government had claimed and which neither had granted to the other, it could only be asserted on behalf of Canada by rejecting an integral part of the lines described in the Treaty, and could only be asserted by the United States Government by its claiming lands partly lying west of the said meridian and north of the east portion of the boundary line along the 49th parallel

and by insisting on title to lands included in the loops simply because enclosed, although not granted to it. Before the treaties were formed, both parties claimed these lands; they have not agreed to their division or distribution, unless we accept the interpretation of the treaty above mentioned, in order to effectuate its manifest intentment to settle the northwest boundary. As to this, no opinion is expressed.

“In view of the premises it would not seem advisable to make the disposition of the lands now under consideration by the Land Office.”

This opinion was adopted by the Secretary of State and communicated by him to the Secretary of the Interior in his letter of June 25, 1904.









